

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

[LB36 LB52 LB54 LB63A LB75 LB89 LB90 LB111 LB134 LB142 LB151 LB160 LB164
LB167 LB184 LB202 LB202A LB204 LB231 LB246 LB293 LB300 LB327 LB328 LB361
LB379 LB388 LB396 LB436 LB465 LB489 LB502 LB547 LB602 LB620 LB639 LB646
LB660 LB675 LR47 LR52 LR53 LR54 LR55 LR56 LR57 LR58]

SPEAKER FLOOD PRESIDING []

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-fifth day of the One Hundred First Legislature, First Session. Our chaplain for today is Senator Fulton. Please rise. []

SENATOR FULTON: (Prayer offered.) []

SPEAKER FLOOD: Thank you, Senator Fulton. I call to order the forty-fifth day of the One Hundred First Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record. []

CLERK: I have a quorum present, Mr. President. []

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there any corrections for the Journal? []

CLERK: No corrections, Mr. President. []

SPEAKER FLOOD: Are there any messages, reports, or announcements? []

CLERK: Enrollment and Review reports LB63A, LB111, LB300, and LB54 to Select File, some of which have Enrollment and Review amendments attached. And that's all that I have, Mr. President. (Legislative Journal pages 763-764.) [LB63A LB111 LB300 LB54]

SPEAKER FLOOD: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda. Mr. Clerk, we have legislative confirmation reports. []

CLERK: (Inaudible) Natural Resources reports on two appointments to the Nebraska Environmental Trust Board. (Legislative Journal page 718.) []

SPEAKER FLOOD: Senator Langemeier, you are recognized to open. []

SENATOR LANGEMEIER: Mr. President and members of the body, I do have two appointments to the Nebraska Environmental Trust. The hearing was March 5, 2009. We have one new member appointed: Rodney Christen from Steinauer, Nebraska. He is appointed to be a member of a 14-member board serving a six-year term and representing District 3. His education: He studied agribusiness at Southeast Community College. He owns and operates a farming operation at Steinauer, Nebraska. He is a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

past president of the Southeast Nebraska Feeders and Breeders Association. He is a member of the Nebraska Cattlemen. He was a member of the Nebraska Land Trust Board and the recipient of the 2008 Nebraska Land Stewardship Award. He was advanced from committee unanimously and we'd ask for your support. The second appointment was Barbara Batie from Lexington, Nebraska. She is a reappointment to the 14-member board serving a six-year term. This will be her second term. She's representing District 3. She's a graduate of the University of Nebraska with a degree in home economics and journalism. Her employment: She works on the family farm with the family. She is an area writer for the North Platte Telegraph and she is a columnist and correspondent for the Lexington Clipper. Her activities: She's a member and a past director of the Society of Professional Journalists. She's a member and a past officer in the Nebraska National Federation of Press Women. She's a past member of the Nebraska Environmental Quality Council. She's a public information director for the Nebraska Water Users and she is a member of the Nebraska Farm Bureau and a member of the Dawson County Extension board. She, too, was advanced from the committee on a unanimous vote and we would ask for your support for both Barbara Batie and Rodney Christen. Thank you, Mr. President. []

SPEAKER FLOOD: Thank you, Senator Langemeier. There are no other lights on. Senator Langemeier, you're recognized to close on the legislative confirmation report. Senator Langemeier waives his opportunity. Members, the question is, shall the legislative confirmation report be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. []

CLERK: (Record vote, Legislative Journal page 764.) 34 ayes, 0 nays, Mr. President, on the adoption of the confirmation report. []

SPEAKER FLOOD: The confirmation report is adopted. Mr. Clerk, we now proceed to Select File, LB184. [LB184]

CLERK: LB184, Mr. President. No Enrollment and Review, Senator. I do have other amendments. Senator Louden offers the first amendment, AM453. (Legislative Journal page 555.) [LB184]

SPEAKER FLOOD: Senator Louden, you're recognized to open on AM453. [LB184]

SENATOR LOUDEN: Thank you, Mr. President and members. Today we revisit LB184, a bill authorizing the Department of Natural Resources to administer riparian water rights. As you know, there are two kinds of water rights: appropriated water rights and riparian water rights. Appropriated water rights are given by the Department of Natural Resources if there is water available in the stream. And it is important that the Department of Natural Resources be able to administer both riparian and appropriated water rights as there are streams in this state where riparian water rights can be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

acquired. The circumstances in which I introduced LB184 involves the Hat Creek Basin. Right now, this is the only place in Nebraska where these rights have been awarded by the court. According to our bill and in case law, these rights must be awarded by the court in order for the department to administer them. The Department of Natural Resources agrees that statute does not give them authority at this time to administer riparian water rights. The department was instrumental in drafting this legislation to correct this issue. The other factors that must be in place to receive riparian water rights include the following. The court must find that the tract of land in question borders a natural stream and the land must have come into private ownership prior to April 4, 1895, and was not separated from the land contiguous to the stream at any time. There have been questions of the constitutionality of this bill and I will address those concerns. I have amendments to address those concerns. With that, Mr. President, I will withdraw, I think it's AM453. [LB184]

SPEAKER FLOOD: Thank you, Senator Louden. Is it your intention to withdraw AM453? [LB184]

SENATOR LOUDEN: Yes, it is. And I will replace it at the appropriate time with AM543. [LB184]

SPEAKER FLOOD: Without objection, so ordered. Mr. Clerk. [LB184]

CLERK: Mr. President, Senator Langemeier, you had a motion, Senator, but I did have a note you wanted to withdraw at this time? [LB184]

SENATOR LANGEMEIER: I'd like to withdraw it at this time. [LB184]

CLERK: Okay. [LB184]

SPEAKER FLOOD: The motion is withdrawn. [LB184]

CLERK: Mr. President, Senator Louden would move to amend with AM543. (Legislative Journal page 660.) [LB184]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Louden, you are recognized to open on AM543. [LB184]

SENATOR LOUDEN: Thank you, Mr. President. There were questions to the constitutionality of the original bill of LB184. We've done some work with the Attorney General's Office and also the Department of Natural Resources to come forward and find a way to improve the situation and improve the bill so that there would not be any question of the constitutionality of it. The Department of Natural Resources had been administering riparian rights for nearly 50 years, and recently it was pointed out that the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

Department of Natural Resources didn't have the statutory authority to do so. AM543 has been drafted and agreed to by the Attorney General's Office. The Department of Natural Resources trusts that this will alleviate the question and the Department of Natural Resources may administer the riparian rights when directed by court proceedings, and at this time everyone seems to be in agreement that this is the amendment that will get this bill moving forward. With that, I would ask for a vote for AM543. [LB184]

SPEAKER FLOOD: Thank you, Senator Louden. Members, you've heard the opening on AM543. Senator Langemeier, you are recognized. [LB184]

SENATOR LANGEMEIER: Mr. President and members of the body, as you're all aware I just withdrew my motion to recommit this bill to committee. Senator Louden has brought up the question we had, was on the original copy of the bill. It came to light after General File and now before Select that this bill had some constitutionalities on a closed class issue. Senator Louden has worked very hard to come up with amendments: the one he withdrew prior to this one and now AM543. If Senator Louden would yield to one question. [LB184]

SPEAKER FLOOD: Senator Louden, will you yield to a question from Senator Langemeier? [LB184]

SENATOR LOUDEN: Yes, I would. [LB184]

SENATOR LANGEMEIER: Senator Louden, my question is, is in your new language--and you and I just talked about this again this morning--is it's pretty vague. The department is authorized to administer riparian rights. [LB184]

SENATOR LOUDEN: Yeah. [LB184]

SENATOR LANGEMEIER: What's going to make...I'm not sure, in discussing this with the department, is what's going to make them engaged to actually do this? [LB184]

SENATOR LOUDEN: Well, I don't know as it would make them engaged. The reason they were authorized to do it, at the present time in order to get riparian water rights you have to go through a court order. And the way it was set up, that in order to administer those riparian water rights it was my understanding that the sheriff had to do that or an officer of the court. This way they can be directed by the court to have the Department of Natural Resources administer those rights if they are so authorized. That's the plan of it is. It isn't something that we wanted to force them into doing but it would give them the authority to, if the court so directed. [LB184]

SENATOR LANGEMEIER: Okay. Thank you. My concern with this and leaving it this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

vague--and I understand we needed it...you wanted it this vague so it would work--my concern is, is that the department is going to have a legal challenge from the other side, the upstream people in this case, and they're going to say the department is administrative for statutory law and not common law. So when we say they have the authorization to do this, I'm fearful that the department isn't going to do it in any way. They're just going to step away from this process because this is common law and they typically oversee statutory law. And so I still have some concerns with that, and with that I am not going to support LB184. Mr. President, thank you. [LB184]

SPEAKER FLOOD: Thank you, Senator Langemeier. There are no other lights on. Senator Louden, you're recognized to close on AM543. [LB184]

SENATOR LOUDEN: Yes, thank you, Mr. President. As Senator Langemeier mentioned, he has some concerns about whether or not the Department of Natural Resources will want to go ahead and do that. The way riparian water rights are set up is you go into court and you get a court order to do that. Now if anyone challenges...if they lose or if the court decrees their riparian rights, then if anyone elects to not follow those rights then they are found in contempt of court and that's the proceedings that goes on through at the present time. So it isn't a matter of whether or not they have the authority to open and shut the gates. The authority has already been given by the court because if someone challenges that, then they'll be in contempt of court. I think what it's all about is mostly the fact that the mechanical work is to have the people involved that know how to operate the gating system and have the people on hand that can do this, is what it's more the hands-on work to be done rather than have a deputy sheriff or a sheriff go up there and handle those situations. So this is what it mostly works around to, is to find the right people to do the right job. And with that, I would ask that you vote for AM543. Thank you, Mr. President. [LB184]

SPEAKER FLOOD: Thank you, Senator Louden. Members, you've heard the closing on AM543. The question before the body is, shall this amendment be adopted? All those in favor vote aye; all those opposed vote nay. Senator Louden, for what purpose do you rise? [LB184]

SENATOR LOUDEN: I would ask for a call of the house, if you would, please. [LB184]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB184]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LB184]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

presence. All unauthorized personnel please leave the floor. The house is under call. Senator Cornett, please check in. Senator Lathrop, please check in. Senator Lautenbaugh. Senator Heidemann, Senator Lautenbaugh, please report to the Chamber. Senator Lautenbaugh, please return to the Chamber. Senator Lautenbaugh. Senator Louden, we are in the process of locating Senator Lautenbaugh without much success at this time. Would you want to proceed? [LB184]

SENATOR LOUDEN: You can proceed, Mr. President. We'll proceed with a board vote. [LB184]

SPEAKER FLOOD: Senator Louden has requested a board vote. Senator Louden, your options at this time would be to accept call-in votes or a roll call vote. Which of those two options would you like to elect? [LB184]

SENATOR LOUDEN: Call-in votes would be fine. [LB184]

SPEAKER FLOOD: Call-in votes, Mr. Clerk. All right. The question before the body is AM543. Call-in votes will be accepted at this time. [LB184]

CLERK: Senator Harms voting yes. Senator Ashford voting yes. Senator Carlson voting yes. Senator Avery voting yes. Senator Dierks voting yes. Senator Pirsch voting yes. Senator Mello voting yes. Senator Adams voting yes. [LB184]

SPEAKER FLOOD: Mr. Clerk, please record. [LB184]

CLERK: 26 ayes, 5 nays, Mr. President, on adoption of the amendment. [LB184]

SPEAKER FLOOD: AM543 is adopted. I raise the call. Are there further amendments to the bill, Mr. Clerk? [LB184]

CLERK: Mr. President, Senator Langemeier, are you...? I have nothing further on the bill at this time, Mr. President. [LB184]

SPEAKER FLOOD: We now return...Senator Nordquist for a motion. [LB184]

SENATOR NORDQUIST: Mr. President, I move LB184 to E&R for engrossing. [LB184]

SPEAKER FLOOD: Members, you've heard the motion. Senator Langemeier, you are recognized to speak on the motion. [LB184]

SENATOR LANGEMEIER: Mr. President, members of the body, I want to make my position on this very clear. I appreciate you putting the amendment on that does take the unconstitutional factor away from LB184, and so with that you have a bill that's now

Floor Debate
March 18, 2009

constitutional, we believe. Now I'm going to restate my concerns, is in this language where it says the department is authorized to administer any riparian right, and I commend Senator Louden for wanting to make this process simpler for his constituent. However, in a position where you are making...just giving them authorization to take a statutorily defending agency--they work with statutory laws--and giving them the authority to go over common laws which is prestatutory, I think is a stretch. And I understand that just by authorizing them, they have the option to do it or not do it, but also with that same breath I think you're going to see the department shy away from this and not going into uncharted waters with overseeing common law, and I think they won't do it. So my concern with this bill is not that it advances or doesn't advance. My concern is, is even if you do pass it, it won't accomplish the goal that Senator Louden has, because I think the department is going to shy away from stepping in to defending common law which they don't typically do or never have done. They do statutory law. And so with that, again I'm going to oppose LB184. Thank you. [LB184]

SPEAKER FLOOD: Thank you, Senator Langemeier. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR47. (Visitors and doctor of the day introduced.) Continuing with discussion on the motion to advance LB184 to E&R for engrossing, Senator Carlson, you are recognized. [LB184 LR47]

SENATOR CARLSON: Mr. President and members of the Legislature, I am going to make a comment and then ask a question concerning LB184. And I look back at the vote out of the committee and it was a 7-0 vote and I listened to Senator Langemeier this morning and his reservations about the bill. I'd like to address a question to Senator Louden, if he would yield. [LB184]

SPEAKER FLOOD: Senator Louden, will you yield to a question from Senator Carlson? [LB184]

SENATOR LOUDEN: Yes, I would. [LB184]

SENATOR CARLSON: Senator Louden, as often happens when bills are discussed on the floor and we can be distracted by various things, so I would like, after hearing Senator Langemeier this morning, ask you to again address that concern and give us any additional information you might have concerning your bill. [LB184]

SENATOR LOUDEN: Okay, thank you. I think part of it is probably some misunderstanding. You want to remember, the Department of Natural Resources was administering these rights for over 50 years. They started clear back in the sixties when this came through the court. At that time it was agreed among the people that were party to the court case that they would have the Department of Natural Resources administer the rights and they agreed to it, which amounted to going up there and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

opening the floodgates or the gates to turn the water back down at Hat Creek. At that time, people were allowed to store water. That was a gentleman's agreement at that time that the ranch on the upper reaches of it could store water through the summer when it wasn't necessary to water cattle. So for 50 years that was done that way and it wasn't a problem. The ranch on the upper end was sold to some people out of Colorado and they came in there and proceeded to store the water, as usual. And then when they wanted it released for the riparian use to water livestock on down the Hat Creek, they were challenged. That they said, well, there's nothing in the constitution that gives the Department of Natural Resources the authority to administer that right or open the gates. So consequently what happened, the winners of that earlier lawsuit had to go back into court and actually find the new owners in contempt of court. Once that was done it was right back to business as usual. In the meantime, once it was challenged, the Department of Natural Resources didn't want to go up there and administer those rights, which would be opening the gates to divert the water back into the creek. Consequently, it has to be done through a court order, so officers of the court, which would be the law enforcement, and it was up to the sheriff as the local law enforcement to go up there and open and close those gates accordingly, whatever the agreement was. So this was the reason it was...it was just to put it into statutes that they do have the authority to administer riparian rights. There's not that many riparian rights in Nebraska yet but there can be more found in the future. [LB184]

SPEAKER FLOOD: Thank you, Senator Louden. [LB184]

SENATOR LOUDEN: That was Senator Carlson's microphone. [LB184]

SPEAKER FLOOD: Senator Carlson, the balance of your time is 1 minute, 32 seconds. [LB184]

SENATOR CARLSON: Okay. And I've got the light on again. Am I next, Mr. Speaker? I've got the light on again. Am I next? [LB184]

SPEAKER FLOOD: No, you are not. Senator Louden is next. [LB184]

SENATOR CARLSON: Okay. I'd like to address Senator Langemeier then, if I could. [LB184]

SPEAKER FLOOD: Senator Langemeier, will you yield to a question from Senator Carlson? [LB184]

SENATOR LANGEMEIER: Yes. [LB184]

SENATOR CARLSON: Okay. Senator Langemeier, I'm simply again trying to get this a little more understandable for me because I voted, as well as you, on the bill coming out

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

of committee, and then... [LB184]

SPEAKER FLOOD: One minute. [LB184]

SENATOR CARLSON: ...neither one of us had a concern at that point about unconstitutionality. And now I think, according to what you said, that's been taken care of and your reservation about the bill is that the DNR would not enforce it. Is that correct? [LB184]

SENATOR LANGEMEIER: I think Senator Louden said it best just a minute ago, is the department was doing this. A court case came along. They shied away. They're not doing it. With this amendment that we just put on it where it just gives them authorization but it doesn't say they shall--which you can't because then we get into unconstitutional issues again so I understand the vagueness--but when you just say they're authorized, they're still going to shy away from it. [LB184]

SENATOR CARLSON: So it then is, in your opinion, that this simply will not be an effective law. [LB184]

SENATOR LANGEMEIER: What I'm saying is there's nothing wrong with the law. It just won't do anything, because I think the department is still going to shy away from getting into these common law actions...enforcement. [LB184]

SENATOR CARLSON: Okay, thank you. [LB184]

SPEAKER FLOOD: Time. Thank you, Senators. (Visitors introduced.) Continuing with discussion on the motion, Senator Louden, you are recognized. [LB184]

SENATOR LOUDEN: Thank you, Mr. President. As pointed out and Senator Langemeier seemed to think that nothing will happen, well, we introduce a lot of legislation around here that has the "may" on there instead of the "shall." I mean, that isn't uncommon to do something like that. The idea is, is before they were challenging that there wasn't anything in statute that gave them authority to do that. Now there will be something in statute that they may do that and this is what it's all about. It isn't...sure, we didn't want to buckle them down so they was going to have to have another full-time employee to do something like this. It's going to be...it's a "may" in there and that's where it has been. This isn't anything new for legislation to pass to have the "may" on there. So I would still suggest we go ahead and advance this bill. It's a good legislation. It isn't anything that is going to harm anyone and it will do some good because, rather than having to have people go into court and get a court order or to find someone in contempt of court, this would...it's in statute that they can administer these riparian rights. This is going to be something that comes more into the future because as people find out that they do have riparian rights someplace, that there will probably be more

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

riparian rights done. And with that, I would ask that this bill be advanced. Thank you, Mr. President. [LB184]

SPEAKER FLOOD: Thank you, Senator Louden. Senator Carlson, you are recognized. Senator Carlson waives his opportunity to speak. There are no other lights on. Senator Nordquist for a motion. Senator Louden, is it your intent to move this to E&R for engrossing? [LB184]

SENATOR LOUDEN: Yes, that would be fine. Thank you. [LB184]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. All those opposed say nay. LB184 is advanced to E&R for engrossing. Mr. Clerk, we now proceed to LB327. [LB184]

CLERK: Mr. President, LB327. The first item I have are Enrollment and Review amendments. (ER8029, Legislative Journal page 681.) [LB327]

SPEAKER FLOOD: Senator Pahls, is it your intention to move the E&R amendments to LB327? [LB327]

SENATOR PAHLS: Yes. [LB327]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. All those opposed say nay. The ayes have it. The E&R amendments are adopted. [LB327]

CLERK: Mr. President, Senator Pirsch would move to amend, AM740. (Legislative Journal page 760.) [LB327]

SPEAKER FLOOD: Senator Pirsch, you're recognized to open on AM740. [LB327]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. AM740 is an amendment that will revisit the issues addressed earlier this session by the Legislature in adopting LB75. LB75 passed the Legislature on a vote of 40-0. Was designed to clarify that Nebraska financial institutions may impose access charges against customers of foreign financial institutions--and when I say foreign, I mean outside of the United States--without violating the nondiscrimination provisions of Nebraska law. The need for LB75 resulted from recent changes in the VISA international operating regulations to allow who are termed acquirers to impose access fees on international ATM transactions. Under the revised regulations, ATM acquirers are permitted to impose an access fee on international ATM cash disbursement transactions, provided that assessment of the fee does not violate state law. LB75 provided authorization for Nebraska financial institutions to impose access charges on customers of foreign financial institutions. Subsequent to the passage of LB75, lawyers for VISA suggested

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

that the language contained within the bill was not sufficient to allow Nebraska financial institutions to impose fees upon customers of foreign financial institutions in and of itself. In our initial conversations with the representatives of VISA in advance of introducing the bill, we were informed that state law must authorize financial institutions to impose such fees in order to supersede provisions of the VISA agreement with individual institutions that would otherwise prohibit such fees. It has now been suggested that the state law must expressly provide that no agreement regarding the operation or sharing of an ATM may prohibit the right of the owner or operator of an ATM to impose such fees; thus, the need for this amendment. It is not major in scope. Rather, what it seeks to do is just enact, in fact, that which the Legislature believed that it was doing. It's kind of a clarification to a lawyer's taste, if you will. So that's the purpose behind the amendment and I would urge everyone to vote green on the amendment. Thank you. [LB327 LB75]

SPEAKER FLOOD: Thank you, Senator Pirsch. Members, you've heard the opening on AM740. Senator Pahls. [LB327]

SENATOR PAHLS: Thank you, Mr. President, members of the body. The Department of Banking and Finance, they do support this amendment. Thank you. [LB327]

SPEAKER FLOOD: Thank you, Senator Pahls. There are no other lights on. Senator Pirsch, you're recognized to close on AM740. Senator Pirsch waives his opportunity. The question before the body is, shall AM740 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB327]

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Pirsch's amendment. [LB327]

SPEAKER FLOOD: AM740 is adopted. Mr. Clerk. [LB327]

CLERK: Mr. President, Senator Nantkes would move to amend, AM734. (Legislative Journal page 760.) [LB327]

SPEAKER FLOOD: Senator Nantkes, you're recognized to open on AM734. [LB327]

SENATOR NANTKES: Good morning, Mr. President. Good morning, colleagues. I rise in support of AM734 to LB327. This is a pretty straightforward, very simple amendment. What it does is increase the fees for licenses for payday lenders in our state. It takes...and then it also creates, from those fees, a cash fund dedicated to financial education and financial literacy across the state. As many of you know, I've had a deep interest in regards to the payday lending industry and its impact on Nebraska's most vulnerable citizens over the past two, three, four years, and prior to joining this body.

Floor Debate
March 18, 2009

We had a fantastic hearing in front of the Banking Committee earlier this session in regards to a different bill that I introduced to further regulate this industry and to provide some protection for Nebraska consumers. That bill encompassed a great variety of different components in terms of changing our current regulatory scheme for payday lenders in Nebraska. What this amendment simply does is focus on the positive and focus on the common ground that we were able to decipher during the course of that public hearing. During, what I think Senator Pahls probably remembers, as Chair of that committee, but during that almost three hours of public debate that we had in the committee hearing, no one testified about the components of the bill...testified in opposition about the components of the bill to increase the fees to the level indicated in the amendment, and everyone talked about the importance of financial education for Nebraskans and truly for all Americans. I'm going to read from a report that was delivered to the Nebraska State Board of Education in December 2006. I think, even though a bit dated, the primary concerns and issues detailed in this report ring true today and maybe have even garnered more significance. The accounting scandals and collapse of corporate giants, coupled with increased personal bankruptcies, have focused national attention on the need for financial literacy. A quote from Alan Greenspan says: The importance of basic financial skills underscores the need to begin the learning process as early as possible. Indeed, improving basic financial education at the elementary, secondary, and adult level will provide a foundation of financial literacy that can help prevent citizens from making poor decisions in years to come. Under the amendment as drafted, the license fee on the industry would be increased, which it's my understanding it has not increased since the inception of the enabling act in the early nineties, so it would help to modernize the fees in regards to licensing for that industry. Then it would create the cash fund, the Financial Literacy Education Fund, which would provide, hopefully, competitive grants to...half to Nebraska's community colleges and state institutions to help improve our status of adult financial literacy in this state, and then the other half to qualified nonprofits who are engaging in these activities. I've passed around, colleagues, two different articles, one from the Journal Star and one from the World-Herald, talking about the importance and need for financial literacy in these difficult economic times. I think this amendment offers a very important public policy decision as we move forward. While it's simple in nature, it allows us to improve the state of financial education in Nebraska without a General Fund taxpayer impact. That's the critically important thing that I want to note. And as many of you know from the Appropriations Committee perspective, I'm always hesitant to do anything that has a significant General Fund impact in terms of new spending. So here we have a prime opportunity to focus on that positive common ground that does exist in terms of how we deal with the payday lending industry. By modernizing the licensing fees in terms of how they operate and creating a fund to strengthen financial education in Nebraska, we can move forward in a positive manner. Thank you, Mr. President. [LB327]

SPEAKER FLOOD: Thank you, Senator Nantkes. Members, you've heard the opening on AM734. Senator Pahls, you are recognized. [LB327]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

SENATOR PAHLS: Good morning, Mr. President, members of the body. I would like to ask Senator Nantkes a question. [LB327]

SPEAKER FLOOD: Senator Nantkes, will you yield to a question from Senator Pahls? [LB327]

SENATOR NANTKES: Yes. [LB327]

SENATOR PAHLS: The question I have to you is sometimes us senators, when we are very compassionate about an idea and it doesn't get out of the committee, they feel it's a necessity to come to the floor to speak on their issue and to pull that amendment, and that's simply what I'm asking, if you're speaking because you need the time to speak on something that's very important to you and will you pull the amendment or do you plan to carry through? [LB327]

SENATOR NANTKES: You're right, Senator Pahls. This issue is very important to me and I plan to proceed to a vote on this issue. [LB327]

SENATOR PAHLS: I thank you. And that is one of the reasons why I oppose AM734, because we did go through the committee process and I believe that this amendment actually is revisiting that bill that we had in committee, and we indefinitely postponed that bill. So it appears to me that what we have done here is we uphold a section of the bill or something very similar to that bill to discuss it on the floor when it was postponed 8-0. Senators Christensen, Gloor, Langemeier, McCoy, Pahls, Pankonin, Pirsch, and Utter voted against this bill. So I think what this does, this puts us in a predicament. I think this falls under the Rule 6, Section 5(b) in which an amendment proposed which are substantially the same as a bill that has been indefinitely postponed should require a 30 vote, and I'm asking for a ruling on this from the Chair. As you think about this, I will go on and discuss this a little bit more, but I think we do need to know, as a body, if this would take 30 votes to proceed. [LB327]

SPEAKER FLOOD: Senator Pahls, you have asked for a ruling of the Chair. Senator Nantkes, I'm going to give you an opportunity to respond. [LB327]

SENATOR NANTKES: Thank you, Mr. President, and thank you, Senator Pahls. You're right. There was a great public hearing in regards to a piece of legislation that I introduced this session and that your committee decided to indefinitely postpone. I do believe, however, that this is a very different, very simple amendment in relation to the very comprehensive piece of legislation that I introduced and was indefinitely postponed. LB293 created a new enabling act, set a 36 percent APR cap on all loans within the state, created a \$500 lending limit, limited check collection charges, prohibited redeposit of checks that hadn't been cleared, allowed additional extended

Floor Debate
March 18, 2009

payment beyond 60 days with no increase in interest; on and on and on and on. Quite simply, Mr. President and Senator Pahls, with all due respect, all this amendment does is alter the amount of fees that are charged in licensing this industry and creates the Financial Literacy Education Fund, which we had public hearing on and no one spoke against at the hearing. Thank you. [LB327 LB293]

SPEAKER FLOOD: Senator Pahls, Senator Nantkes, would you please proceed to the Chair? Members, we will stand at ease until further notice. Responding to the issues raised by Senator Pahls as they relate to Senator Nantkes' AM734, the Chair rules as follows. As it related to germaneness, Senator Nantkes' amendment to LB327, AM734, proposes to amend statute sections 45-906, 45-910, 45-927 of the Delayed Deposit Services Licensing Act and includes a new section creating a Financial Literacy Education Fund. LB327 amends section 45-922, which does open the Delayed Deposit Services Licensing Act for debate and consideration. Because of this, AM734 is, in fact, germane to LB327. As to the question as to how many votes are required for AM734 to be adopted, it is my ruling that 30 votes are required. AM734 entails a critical component of Senator Nantkes' LB293, a bill to adopt the Short-Term Lenders Act and eliminate the Delayed Deposit Services Licensing Act. The amendment, AM734, creates the same Financial Literacy Education Fund found in Section 21 of LB293. The language of the fund is identical to LB293 except for the fee source and the amount placed in the fund. Additionally, the amendment includes standard investment language for any funds available for investment by the state financial investment officer. The amendment increases licensing fees to fund the Financial Literacy Education programs. The similarity of this provision in AM734 to Section 21 of LB293, which was indefinitely postponed by the Banking Committee on March 9, 2009, warrants a 30-vote requirement on an amendment "substantially the same as any bill indefinitely bill," found in Rule 6, Section 3(h). That is the ruling of the Chair. Senator Nantkes, for what purpose do you rise? [LB327 LB293]

SENATOR NANTKES: Mr. President, I would like to move to overrule the Chair. [LB327]

SPEAKER FLOOD: There has been a motion to overrule the ruling of the Chair. Members, Senator Nantkes will be entitled to open for 10 minutes on her motion. Each member may only speak once. Each member may have up to 5 minutes. Members may not yield time to one another nor ask questions. Senator Nantkes, you are recognized to open on your motion to overrule the Chair. [LB327]

SENATOR NANTKES: Thank you, Mr. President, and thank you, Senator Pahls, for working with me through this process. To be clear, colleagues, I won't need my 10 minutes in this opening. As I stated in the opening to the amendment, I believe that this is a very simple, very straightforward amendment which is very typical for our processes here in the Nebraska Legislature. The original bill that I introduced was over 36 pages

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

long. Look on your Viewer, look at the amendment. It's two pages. It's a few lines. And I do not believe...I disagree, respectfully disagree with the Chair in terms of that that encompasses a critical component of LB293, which is really at the heart of this motion. As I stated before, we had almost a three-hour public hearing on this bill and we had robust debate from opponents and proponents in terms of dealing with the payday lending industry in Nebraska. During that time, we did not hear any discussion in terms of increasing the fees or creating the Financial Literacy Fund except from a positive perspective. So the committee priority bill that is before us today amends a variety of different sections related to the financial services: credit unions, banks, and the payday lending industry under Nebraska's Delayed Deposit Services Act. Quite simply, this amendment just increases the fee, which is technical in nature, much like other aspects of the bill; creates the fund which we've already had a public hearing on and people were very positive about; and follows the appropriate statutory language, as with all cash funds, to ensure logistically it can be carried out appropriately. With that, I would ask that you move to overrule the Chair and I thank you, Mr. President. [LB327 LB293]

SPEAKER FLOOD: Thank you, Senator Nantkes. Senator Cook, followed by Senators Price and Pahls. [LB327]

SENATOR COOK: Thank you, Mr. President, members of the body. Before the rules and the ruling and the Chair, I was going to rise in strong support of the amendment based on some input that I've gotten, not only on the campaign trail but since I've been sworn in, in my role. As many of you know, Legislative District 13 is among the state's most diverse, and when I say diverse I mean diverse not only racially/ethnically but economically. There are people that live within my district who have been blessed with lots of financial resources and there are also people within the district who are not so blessed. So I rise in support of AM734 to LB327 as a way to address what I believe to be somewhat of--pardon the use of the term--continued victimization of a group of poor who have very few other options when there is too much month at the end of the money. Again, I would like to offer support to AM734 as a way to provide funds for literacy education, not just in my district, not just in Omaha, but across the state of Nebraska. We've talked many times and we'll probably talk many more times in the next half of the session about the impact of the economic crisis on families. In my view, the existence of some of the practices of payday loan businesses contribute to the hollowing out of families and their resources. So once again I invite you to support AM734 and I imagine that requires an overruling of the Chair to a certain degree. So thank you very much. [LB327]

SPEAKER FLOOD: Thank you, Senator Cook. Senator Price, you are recognized. [LB327]

SENATOR PRICE: Mr. President, members of the body, thank you very much. I rise in opposition to this amendment and I had some questions to make sure...to feel things

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

out. I was wondering if Senator Pahls would yield to a question. [LB327]

SPEAKER FLOOD: Senator Price, the rules do not allow you to yield time. [LB327]

SENATOR PRICE: Okay. All right, okay. Well, then great. I'm going to go off of what I've heard from the floor talk, that this is aimed primarily at the paycheck-type places where you write a check early and get some money from a check cash, advance cash, advance check-type place. And you know, when I was a young airman I had to utilize these facilities and I knew when I walked in what I was getting into. I was lucky. I was fortunate. And I had to utilize them and it worked for me. And you'll find these institutions outside of every air base, every Army post, every Marine location, trying to get the payday advance-type things. But really what I'm concerned about with this amendment is it targets only one financial segment, a part of the market, okay? It (inaudible) a fee on a tenfold, and this is a legal business in the state doing legal transactions, and we're going to single them out. Now do we want to be in the habit of doing that, is the question that we have to have here, and I don't support that habit. Now if we are going to pass laws and regulate how much they can do, then we'll do that, but just to go in and penalize them and when we're not doing it across the board, to create a fund for everybody. People need to know how to do many transactions. These derivatives that have hurt our market here lately, those were gone into by people with Ph.D.s and master's. So these are very educated people, the credit derivative swaps and the stuff like that. So it's not just people on one end or the other. So everybody should be paying into this, not just one segment. Now as far as overruling the Chair goes, I think that that's an option that is available, obviously, in the books, that's being exercised. But I think the Speaker gave a good reason for the reason he made his ruling and I think we should support that to keep good order and conduct...good order throughout the session. Thank you, Mr. President. [LB327]

SPEAKER FLOOD: Thank you, Senator Price. Senator Pahls. [LB327]

SENATOR PAHLS: Mr. President, members of the body, I don't know if the body understands, this is the Department of Banking and Finance. This is their bill. This is their bill that they bring forth to us every year, what I call, to some degree, housekeeping. They oppose this amendment. They see this amendment as a very controversial amendment. So when they have the...and I requested that information from them because I wanted to be able to stand up in front of the body and say where do you stand on this amendment. They oppose it. They said this is not typical that falls into this category of their bill that we bring forth every year. So that leads me to believe that these individuals in charge of the Banking Department are the regulators. If they thought this was a necessity to be placed on this bill, they would probably say let's do it. Now there is a history of how payday lenders, how this all came about. I'm not arguing about education, because when we were discussing this bill basically the original bill would have actually eliminated, so we probably didn't spend as much time as the

Floor Debate
March 18, 2009

Senator likes on the educational concept of that bill, but I'm telling her, bring it back next year. If this is that important and you can get the support from the people who say that we do need to take a look at this, I'm offering you that opportunity. Bring it in front of the committee. Make it simple, to the point, and we'll see what happens. Again, as you said, we gave three hours, because I really wanted to be as fair as possible, and I constantly ask the question, what is the solution? And I'll probably go into that in more detail as we move along, but again I'm just saying, is the department is not supporting this amendment. Thank you. [LB327]

SPEAKER FLOOD: Thank you, Senator Pahls. Senator Friend, you are recognized. [LB327]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I don't know why I feel like I always...that I feel like I'm in a position where I have to do these type of things but I guess I am, maybe for my own edification. I'm not really sure. Forget about the amendment for one second. Just forget about it. The motion is to overrule the Chair. All right, now...and separate the decision made up there from the fact that we're all members of this Legislature and what you're...and consider the ramifications of what you're going to do. Now you may not think that that's important. I mean, it's a procedural motion. No big deal, right? The Chair made a decision based on the interpretation of the rules. The Chair can easily be overruled. Well, a couple of things, and these may be a little esoteric. The Chair is a human being. The Chair is an elected official by us, the members of the body, to make these decisions. And the Chair controls the agenda in the Legislature. All right? Just remember that. Keeping that in mind for just a second, you all know how long I've been here--I've said it a few times--I can count on I think one finger the amount of times where we've overruled a decision of the Chair, not saying that it's not appropriate, not saying that the debate hasn't become heated, because it has. I've seen it. I've seen fire coming out of people's mouths and it wasn't mine. But it's rare. It's not rare that it occurs; it's rare that it actually...it's not rare that the motion occurs; it's rare that it actually happens. Now I think it's rare for a couple of reasons. One of them I already pointed out. It's a decision made by the person and people that we have put in charge of making those decisions. They make mistakes, but I heard the decision and I thought it was fairly well-reasoned. Now let's move to the second piece. Overruling the Chair...if you overrule the Chair, you get an opportunity to discuss AM734, understanding that you only need 25 votes to get AM734 adopted to LB327. If you don't overrule the Chair--I don't mean to sound like a teacher here but I'm telling you this is important--if you don't overrule the Chair, Senator Nantkes is still going to have plenty of ability to talk about AM734. She just needs 30 votes to get it. That's the way this sits. Now, remember I said forget about AM734 for a second. Oh, and by the way, a motion to overrule the Chair is just a majority of those voting. Now you can call the house but it's just a majority of those voting. If there were 12 people in here, what is it? Seven. Now I said forget about AM734 for a second but now let's go back to it. Remember when we chastised Senator Langemeier and the Natural Resources

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

Committee for the Game and Parks fees? Those were nominal compared to this. Somebody asked me, hey dude, figure it out, what's the percentage here? Look, I wasn't that good in algebra but who cares what the percentage is? This is unbelievable... [LB327]

SPEAKER FLOOD: One minute. [LB327]

SENATOR FRIEND: Now all that being said, if a few things happen here I'm just going to tell you what I feel like I'm going to do. This Banking bill is important, but you know what? It's not going to have this fee increase in it, not if my political body has anything to say about it. So, all well-intended, AM734 is a noble and interesting idea. If we overrule the Chair and we adopt this with 25 votes, the game is on and I love to play the game. Now I've got about 12 or 14 or 15 ideas for amendments and this can end up taking 33 votes for Senator Pahls to get it passed if we attach this amendment. So understand the ground rules and understand the game. It's rare to overrule the Chair. It's okay, but it's rare. [LB327]

SPEAKER FLOOD: Time. [LB327]

SENATOR FRIEND: Thank you, Mr. President. [LB327]

SPEAKER FLOOD: Thank you, Senator Friend. (Visitors introduced.) Senator Council, you are recognized. [LB327]

SENATOR COUNCIL: Thank you, Mr. President. I rise conflicted again with regard to this situation. I certainly respect the work of the committee and the decision of the committee and I respect the office and the position of the Chair. But I share Senator Nantkes' passion with regard to these paycheck advance companies and the impact it has on citizens in the state of Nebraska, and I will refer specifically to my district and the impact that this has had on the horrible economic conditions that exist in my district. And the need for literacy education has been so prominent in my district that the Omaha Public Schools established a literacy education program as part of the magnet concept of one of the elementary schools in my district because of the recognition of the importance as stated by Senator Nantkes as starting as early as possible in providing literacy education. I listened to Senator Friend with regard to the fees that were discussed with Game and Parks and, in terms of what the discussion is here, it is not uncommon, at least from my limited experience here. If the floor disagrees with the amount of fees established in a bill when it comes to the floor, they quickly and readily and freely amend it to increase it or decrease it. I appreciate the position that this fee may be too high. Well, then let's discuss the fee. But the bill itself dealt with the licensing of these entities. This amendment deals with the amount to be charged to those entities for that licensing. I believe that the issue is ripe for debate and if the body chooses not to advance the amendment, that's certainly their prerogative. And in response to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

Senator Pahls, you know, I respect that the department didn't come in and support this but I can't attribute a lot of weight to that because I've sat in committees where the department has come in and actually opposed the legislation, and it was advanced out of committee and voted upon by this body. So there are occasions where the department's position may not be consistent with the will of this body or, in fact, the will of the people of the state of Nebraska. So for this reason, giving and recognizing in all due respect to the president, I will be voting to overrule the Chair. [LB327]

SPEAKER FLOOD: Thank you, Senator Council. Senator Avery, you are recognized. [LB327]

SENATOR AVERY: Thank you, Mr. President. I might vote for this amendment. I'm not quite sure yet. But I will vote to uphold the ruling of the Chair and I do that because I believe that we should be very careful in this body about overruling what I think are reasonable decisions of the Chair. We should reserve our votes to reject or to disapprove of an overrule. Sorry, let me restate that. We should reserve our votes to overrule the Chair only in those cases where the Chair has made an egregious mistake, and I do not believe this is the case today. So I will vote to support the Chair in this matter but I might vote to support the amendment. Thank you. [LB327]

SPEAKER FLOOD: Thank you, Senator Avery. (Visitors introduced.) Continuing on with discussion on Senator Nantkes' motion to overrule the Chair, Senator Nelson, you are recognized. [LB327]

SENATOR NELSON: Thank you, Mr. President. Members of the body, I add a hearty second to the words of Senator Friend and Senator Avery. Regardless of the merits of the amendment here, and I have not quite made up my mind, but I think it could be subject to amendment if we do pass it, but I don't think this is the time to overrule the ruling of the Chair. I think it was a well-reasoned ruling. Senator Avery used the word egregious. I can remember only one time in the last two years I thought there was an egregious breach on the part of the Chair. I voted to overrule and we didn't still didn't make it. So we should do this very carefully, consider it very carefully, and only in extraordinary circumstances fail to support the Chair in a ruling like this. Thank you, Mr. President. [LB327]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Hadley, you are recognized. [LB327]

SENATOR HADLEY: Mr. President and members of the body, I'll just make it very quick. I agree with Senator Nelson, Senator Avery, and Senator Friend. When we elect a Speaker, we expect someone who is going to lead us, and I think we need to respect those decisions, when again, I think the term "egregious" is the correct term, when there are really an egregious ruling that we can't live with. I'd hate to see us fall into this trap

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

of all of us being able to bring these kinds of overruling the Chair to the floor, so I would stand opposed to overruling the Chair. Again, I have not made up my mind yet on AM734 but I will be voting no on overruling the Chair. Thank you. [LB327]

SPEAKER FLOOD: Thank you, Senator Hadley. There are no other lights on. Senator Nantkes, you're recognized to close on your motion to overrule the Chair. [LB327]

SENATOR NANTKES: Thank you, Mr. President. Thank you, colleagues. I think we had a good debate on this process point here. I encourage you to overrule the Chair but of course I think there's been a lot of good points made today about why people don't feel that's a right move in terms of process. But I would like to get back to the debate on the substance of the amendment and the underlying bill. That being said, again, the original legislation was over 36 pages long. The key component, the real issue that people focused on was capping annual percentage rates for payday lenders to 36 percent, as Congress has done for our military families, as 14 other states have done. The committee chose to kill that bill and allow 460 percent interest to continue to be charged by this industry against citizens of Nebraska, and that's fine, but those really were the main components of the underlying bill. Again, this is a very simple, very technical change in licensing fees and creation of a Financial Literacy Education Fund, which provides a lot more sound information for Nebraska consumers without a General Fund or taxpayer impact. Thank you, Mr. President. [LB327]

SPEAKER FLOOD: Thank you, Senator Nantkes. Senator Pahls, for what purpose do you rise? [LB327]

SENATOR PAHLS: I'd like to have a call of the house, please. [LB327]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB327]

CLERK: 30 ayes, 0 nays, Mr. President, to place the house under call. [LB327]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Pankonin, Loudon, Karpisek, Rogert, Heidemann, Nordquist, Lathrop, Ashford, Council, Coash, please return to the floor and record your presence. Senators Heidemann, Karpisek, Loudon, Nordquist, Pankonin, please return to the floor. Senator Heidemann, would you please check in. All senators are present or otherwise accounted for. Under our rules, this will require 25 votes. We do have one member absent at this time. Senator Nantkes, for what purpose do you rise? [LB327]

Floor Debate
March 18, 2009

SENATOR NANTKES: Mr. President, I'd like to request a roll call vote, please. [LB327]

SPEAKER FLOOD: A roll call vote in regular order has been requested. Mr. Clerk, please...prior to that, the question before the body is, shall the Chair be overruled? A vote for this motion overrules the Chair. A vote against this sustains or supports the Chair's position. Mr. Clerk, please read the roll. [LB327]

CLERK: (Roll call vote taken, Legislative Journal page 766.) 6 ayes, 42 nays, Mr. President, on the motion to overrule the Chair. [LB327]

SPEAKER FLOOD: The Chair's ruling is sustained. I raise the call. We return to discussion on AM734. Senator Nantkes, you are next in line. You may be recognized. [LB327]

SENATOR NANTKES: Thank you, colleagues. Again, I completely understand the process component contained in our last vote there, but I think it's important as we move forward that we take the time to carefully consider each of the issues and fully, aggressively pursue all of the procedures that are available to us as individual senators to try and achieve our public policy objectives. That being said, we can now thankfully get back to the merits of the underlying bill, which again, to be clear, I plan to move forward with a vote on. I was hoping that because I still believe that this was a very separate, distinct, and small technical component of the original bill that I introduced, that we could focus on the positive contained therein in relation to improving financial literacy for Nebraska students and adults, particularly in these difficult financial times and conditions. However, some opponents have started to open the can of worms in terms of the abuses that the payday lending industry has perpetrated upon Nebraska citizens. And so that being said, I think that we need to ensure that we have a full and fair debate on some of those issues and that we make the record very clear. Fourteen other states and the federal government have, as applied to military families, have applied a 36 percent annual percentage rate cap on the payday lending industry to protect consumers in those states and military families around the country. That was the key component of my original legislation which I continue to feel very, very strongly about, and let me tell you why. The reasons that I feel so strongly about those are really threefold. One, before I joined this body, working as a public interest attorney, I did a lot of work in terms of consumer rights, and we frequently, frequently had intakes of families trapped in a cycle of debt perpetrated by this unscrupulous industry. I don't think really anyone has a problem with the quintessential one-time user, so to speak, of these outrageously high financial service products. But the real problem is the underlying business model and how it only succeeds when they keep families trapped in a cycle of debt, and they continue to flip a very small loan and charge additional fees and that is really when we start to run into trouble. In the 14 other states that have put an effective 36 percent cap on this industry what we've seen is a rise in responsible financial service products for those who are truly in need. And those products have

Floor Debate
March 18, 2009

been developed by our responsible members of the financial services market. Nebraska community bankers, Nebraska credit unions, those are the people that would benefit if this unscrupulous industry is further regulated. That being said, let's go back to the financial education piece. Over 30 states have adopted more stringent programs in terms of financial literacy according to the National Conference of State Legislatures. As I noted before, the Nebraska Department of Education and Board of Education have looked carefully at these issues, and I'm happy to report that data provided by the Nebraska Department of Education for the 2005-2006 school year indicates that almost 87 percent of public and nonpublic high schools offer at least one financial education course. [LB327]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: One minute. [LB327]

SENATOR NANTKES: That's a good step in the right direction. However, as we can see with the mortgage lending crisis, spiralling credit card debt, and a variety of other challenges facing Nebraska's working families, we can do more in terms of financial education. This amendment offers you the ability to do that, to improve financial education services across our state, kindergarten through college and beyond for adult continuing education, and doing so without a cost to Nebraska taxpayers, while only simply increasing a license fee on 140-some unscrupulous members of Nebraska's financial services industry. Thank you, Mr. President. [LB327]

SENATOR LANGEMEIER: Thank you, Senator Nantkes. (Visitors introduced.) Returning to discussion on AM734 offered to LB327, Senator Price, you're recognized. [LB327]

SENATOR PRICE: Thank you, Mr. President, members of the body. I was wondering if Senator Nantkes would yield to a question, please. [LB327]

SENATOR LANGEMEIER: Senator Nantkes, would you yield? [LB327]

SENATOR NANTKES: Yes. [LB327]

SENATOR PRICE: Senator Nantkes, from discussion again from the floor here, it seems that the target for funding the education service would be these 140-odd institutions, correct? [LB327]

SENATOR NANTKES: That's correct. [LB327]

SENATOR PRICE: Senator Nantkes, has anybody else lost money in the market here lately, anybody other than people who go to payday advance-type places? [LB327]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

SENATOR NANTKES: Yes, of course. [LB327]

SENATOR PRICE: Are we asking any other financial institutions to pay into a fund to teach about financial education? [LB327]

SENATOR NANTKES: We are not, Senator Price, but I'm happy to work with you if you want to suggest an amendment asking the banks and the credit unions to do the same. I think that they are a sound member of Nebraska's financial services industry and are responsible in the products and services that they offer to Nebraska consumers. We don't see the same sort of replete problems in terms of credit unions and banks that we do with payday lenders. [LB327]

SENATOR PRICE: Thank you. Now, Senator Nantkes, are payday lenders legal business entities here in the state? [LB327]

SENATOR NANTKES: Yes, they are. [LB327]

SENATOR PRICE: Okay. So we've established they're legal and we do have opportunity to change some of their practices if we chose to change them. But again, I'm just curious why are they going to pay the burden and they alone pay the burden of an education process that will educate across the state? [LB327]

SENATOR NANTKES: A couple of reasons, Senator Price. Number one, during the hearing that we had on the original legislation, everybody, including the payday lending industry, acknowledged the need for increased financial literacy education. That's the common ground that we can find. In terms of the business model which traps families in a cycle of debt, that is solely within the purview of the payday lending industry. That is not a problem we see with credit unions. That is not a problem we see with banks. That's why they are specifically exempted from the original legislation. In terms of the fees, the other point is prior to the early nineties this industry really operated in terms of no regulation, as we heard during the committee hearing. Enabling law was enacted by this Legislature in the early nineties which set up the licensing fees, which is subject to the amendment at hand. Those licensing fees have not been updated since the early nineties. So simply, this goes ahead and modernizes and involves the need for increasing their licensing fees, and then it takes the proceeds to achieve mutually agreeable objectives, which is improved financial literacy education. [LB327]

SENATOR PRICE: Okay, thank you, Senator Nantkes. Now can you tell me what this education program is going to look like, how much revenue it's going to need, how you're going to offer this up or deliver it to those who are in need in communities that need it? Because I just now did a quick calculation, 140 institutions times the \$5,000 license, which I understand would be an annual recurring for at least the main office.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

Then we're looking at about a \$700,000 boon for this education. Yet it has to go across the state. So...and I saw that you had some community college reference, but then you also had other organizations. So can you take a moment to elaborate on how this is going to actually get delivered to people? [LB327]

SENATOR NANTKES: Sure. And under the amendment, that's exactly what it does. It takes that increased licensing fee and creates the Financial Literacy Education Fund. [LB327]

SENATOR LANGEMEIER: One minute. [LB327]

SENATOR NANTKES: Half of those proceeds would be allocated to the community colleges and other state colleges and universities within Nebraska to improve, strengthen or create financial education programs for their citizens...for their students. The other half would be through rules and regs the Department of Banking would lay out, hopefully afforded to nonprofits and other people like Nebraska's Financial Services Coalition to provide financial literacy education for Nebraska's adults in communities across the state. So in order to accomplish all of that we need to have significant resources to begin that program. This is an ongoing revenue source to accomplish that beneficial public policy goal without adding additional impact on Nebraska taxpayers. [LB327]

SENATOR PRICE: Thank you. I think my time is about up. But the one question I have, are these...is this segment of the population the segment of the population that habitually partakes to community colleges... [LB327]

SENATOR LANGEMEIER: Time. [LB327]

SENATOR PRICE: ...for education? [LB327]

SENATOR LANGEMEIER: Time. Thank you, Senator Price. Those wishing to speak, we have Senator Fulton, Haar, and Price. Senator Fulton, you're recognized. [LB327]

SENATOR FULTON: Thank you, Mr. President. A quick question, if I could, to Senator Nantkes, if she'd yield. [LB327]

SENATOR LANGEMEIER: Senator Nantkes, would you yield? [LB327]

SENATOR NANTKES: Yes, of course. [LB327]

SENATOR FULTON: Senator, the amounts of increase is from \$150 to \$5,000? [LB327]

SENATOR NANTKES: Yes. [LB327]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

SENATOR FULTON: Is that...that seems fairly significant. It is, it's fairly significant. Is your intention here to...I mean, how would this hurt the industry, I guess? Do you have some intention of making the industry smaller? [LB327]

SENATOR NANTKES: No. To be very clear, this is no punitive motives behind this. It is simply a modernization. [LB327]

SENATOR FULTON: Would you say that...in my small business, whatever fees that we have to pay, whatever costs of business, if they were to increase by this magnitude, it probably would put me out of business. Do you suspect that raising this fee to \$5,000 will cause some of these businesses to cease to exist? [LB327]

SENATOR NANTKES: I don't, Senator Fulton. And I can't speak to the financial soundness of your small business. But what I do know is that this licensing fee paid by the members of this industry should be easy for them to subsume for a variety of different reasons. We have a variety of reports available showing us the record windfall profits that this industry takes in each and every year. So by simply modernizing their licensing fee to continue to operate in a manner that I believe is unscrupulous but nonetheless would help to improve licensing, regulation, and could easily be subsumed by the industry. [LB327]

SENATOR FULTON: Okay. Okay, thank you, Senator Nantkes. So I...it sounds, anyway, as though this is something these businesses could afford. I don't know that I agree with that. But I'm glad to hear that. The issue of financial literacy, I don't know that anyone could argue against having more financial literacy. That's a principle, that tool in and of itself is meritorious and it should always be meritorious. My concern here is that by implementing a new segment of education that has to do with financial literacy, perhaps we're not getting at the problem necessarily of spiraling financial debt. I'm not convinced that it's simply a mathematical understanding of how finances work. Certainly that should be part of it. But I've never had a financial literacy course and I would venture to say that many of us here have not, yet we understand that if there's \$10 available to spend then we shouldn't spend \$20. The mathematics behind, to use the term, "financial literacy" seem to me pretty straightforward. So while I recognize that we should have some element of financial literacy, some adequacy when it comes to managing our own finances, I'm not convinced that this, in and of itself, is going to fix that problem. Now it's possible that these businesses contribute to financial delinquency. That is...that argument has merit on its own. And so for that I applaud Senator Nantkes for tying these two together by way of policy. But there's also a fact that sometimes these businesses provide a legitimate need. There are probably others in here who have utilized these businesses in the past, I have when I was in college. There is a legitimate need. So I'm going to be opposed to AM734 not simply because of the process which we had a debate on here earlier, but because I'm not certain that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

we're getting at the nub of the problem, the responsibility of individuals for their own finances. But secondly, I think that by increasing these fees to this magnitude there will be less businesses, and in fact there would be perhaps no businesses, certainly less businesses. And if indeed that is the intention of this bill, then that should be incorporated within the record and maybe even into the statute. So thank you, Mr. President. [LB327]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Haar, you're recognized. [LB327]

SENATOR HAAR: Mr. President, members of the body, I rise in support of AM734. There's significant areas of poverty in my district, in Lincoln in particular. And I really do believe that payday lending has created problems for a lot of people in poverty. And it, as someone had said earlier, traps people in this cycle of debt. We're hearing reports sometimes of people who pay...wind up paying 400 percent interest per year on a loan that they've made. And I think as we've learned over the last year in terms of the national economy, regulation is not necessarily a four-letter word. And I realize that's not what this amendment is about. And I see education as a first step. I would like to see education as the first step, and then hopefully next year we can look again at some more reasonable ways of regulating the payday lending industry, not to get rid of it entirely certainly, because it is a legitimate business, but to introduce some reasonable kind of regulation. So I, again, rise in support of AM734. Thank you. [LB327]

SENATOR LANGEMEIER: Thank you, Senator Haar. Senator Nantkes, your light is the last light. You have the opportunity to speak or close. Which would you like to do? [LB327]

SENATOR NANTKES: Mr. President, just as a point of information, how much time I am afforded for close...how much time would I be afforded for closing? [LB327]

SENATOR LANGEMEIER: Five minutes for both. [LB327]

SENATOR NANTKES: For both, okay. [LB327]

SENATOR LANGEMEIER: So you could do two. [LB327]

SENATOR NANTKES: I'll go ahead and close. [LB327]

SENATOR LANGEMEIER: Okay. You're...Senator Nantkes, you're recognized to close on AM734. [LB327]

SENATOR NANTKES: Thank you, Mr. President. Thank you, colleagues. To be clear, Senator Fulton I think brought out a very good point in terms of what impact this would

Floor Debate
March 18, 2009

have on the industry. Well, colleagues, I'll let the industry speak for themselves. When we had, again, almost a three-hour public hearing on this bill, on a related bill, this component contained in LB...or in AM734 was a part of that bill to increase the fees on...for licensing by this amount and to create this Financial Literacy Fund. No one spoke against that component of the bill. So that says to me that the industry can easily subsume this modernization of the fees that we charge as a state to license this industry. And the good news is that we can also achieve improved financial education, kindergarten through college, including adult education, adult continuing education in regards to financial literacy, which I am so happy to hear so many of my colleagues rise in support of. And the good news is doing this through licensing fees we can improve, dramatically improve financial literacy and financial education in Nebraska without an impact to the Nebraska taxpayer. Without a General Fund impact we can create and strengthen good things that are happening in every community across the state in terms of people committed to financial literacy and sound financial products by giving them the resources that they need to continue to spread their message. All this amendment does is simply up the fees in terms of licensing, which haven't been updated since the early 1990s. I'm sure if you looked at that in terms of inflation and where we are today there would be a dramatic increase. If the amount is the thing that people are worried about, I'm happy to work with any member of the committee or this body, let's look at maybe \$2,500 a year, let's look at maybe \$3,000 a year. Let's figure out where the public policy push needs to be from this body in order to improve financial literacy for our citizens so that they can make sound financial decisions. I think this is a commonsense piece of legislation which allows the industry to continue to operate without any impunity, continue to trap some families in the cycle of debt, but only says, if you're going to operate in our state, we're going to modernize your fees and we're going to use those fees to improve financial literacy across the state of Nebraska without an impact to the Nebraska taxpayer. With that, Mr. President, I would ask for a call of the house. And I urge your support of AM734. [LB327]

SENATOR LANGEMEIER: Thank you, Senator Nantkes. You have heard the request for the call of the house. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Mr. Clerk, please record. [LB327]

CLERK: 30 ayes, 0 nays, Mr. President, to place the house under call. [LB327]

SENATOR LANGEMEIER: The house is under call. Members, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Nantkes, as we wait for the senators' return, how do you wish to proceed, a board vote or roll call? [LB327]

SENATOR NANTKES: Mr. President, I would request a roll call vote and that that be recorded. [LB327]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

SENATOR LANGEMEIER: In regular order? [LB327]

SENATOR NANTKES: Yes, please. [LB327]

SENATOR LANGEMEIER: Thank you very much. The house is under call. Senators, please return to the Chamber and record your presence. Senator Louden, please return to the Chamber. The house is under call. All members are present or accounted for. There has been a request for a roll call vote in regular order. I will remind the body, this vote will take 30 votes. The question before the body is, shall AM734 be adopted to LB327? Mr. Clerk, please call the roll. [LB327]

CLERK: (Roll call vote taken, Legislative Journal pages 766-767.) 13 ayes, 25 nays, Mr. President, on the amendment. [LB327]

SENATOR LANGEMEIER: AM734 is not adopted. With that, I raise the call. [LB327]

CLERK: I have nothing further on the bill, Mr. President. [LB327]

SENATOR LANGEMEIER: Senator Nordquist for a motion. [LB327]

SENATOR NORDQUIST: Mr. President, I move LB327 to E&R for engrossing. [LB327]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. LB327 does advance. Mr. Clerk. Items for the record. [LB327]

CLERK: Mr. President, thank you. Your Committee on Health and Human Services reports LB489 to General File with committee amendments attached, that report signed by Senator Gay. Your Committee on Natural Resources reports LB388 to General File, LB502 to General File, those signed by Senator Langemeier. And Agriculture Committee reports LB602 as indefinitely postponed. Communication from the Governor. (Read re: LB52, LB89, LB90, LB142, LB151, LB167, LB204, LB231, and LB379.) New resolution: LR52 by Senator Lathrop; LR53, Senator Avery; Senator Utter offers LR54; Senator Wightman, LR55; and Senator Heidemann, LR56. Those will all be laid over. That's all that I have, Mr. President. (Legislative Journal pages 767-772.) [LB489 LB388 LB502 LB602 LB52 LB89 LB90 LB142 LB151 LB167 LB204 LB231 LB379 LR52 LR53 LR54 LR55 LR56]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to the first item under General File, 2009 committee priority bills. []

CLERK: LB361, Mr. President, a bill by Senator Avery. (Read title.) The bill was

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

introduced on January 16 of this year, at that time referred to the Government, Military and Veterans Affairs Committee for public hearing. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM552, Legislative Journal page 648.) [LB361]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Avery, you're recognized to open on LB361. [LB361]

SENATOR AVERY: Thank you, Mr. President and colleagues. LB361 allows public entities created under the Interlocal Cooperation Act, the Joint Public Agency Act, and the Municipal Cooperative Financing Act to utilize an electronic voting device to record roll call or voice votes of the governing body of such entities. Entities created under the Interlocal Cooperation Act and the Joint Public Agency Act consist of two or more public bodies that join together to perform a government service. For example, a village and a county may enter into an agreement for the county sheriff to provide law enforcement for the village which does not have a police department. Entities under the Municipal Cooperative Financing Act include, for example, the Municipal Energy Agency of Nebraska, which is a wholesale electric supply organization. Currently, the law provides that only municipalities are authorized to utilize an electronic voting device. This bill would allow these entities I have just talked about to use the same devices in recording votes. Let me explain to you why this is important. The Municipal Energy Agency of Nebraska has 190 communities that it serves. Their bylaws give all of these 190 communities voting rights. Sometimes in a roll call vote it will take as much as 30 minutes in a meeting to get that vote recorded. This would expedite voting by allowing electronic voting. The bill keeps the requirement that the votes of each member of a governing body be readily seen by the public. Other public bodies in addition to municipalities currently use electronic voting, as do we here in this body. This bill would allow efficiency in government. It would save public groups a great deal of time, particularly those groups like MEAN, that I just mentioned that are quite large. It would also allow for a more accurate record of voting rather than handwritten notes. I would point out that there was no opposition at the hearing on LB361. Media of Nebraska testified in a neutral capacity. I urge you to support this bill. Thank you, Mr. President. [LB361]

PRESIDENT SHEEHY: Thank you, Senator Avery. You have heard the opening to LB361. As was noted, we do have a committee amendment from Government, Military and Veterans Affairs, AM552. Senator Avery, you're recognized to open. [LB361]

SENATOR AVERY: Thank you, Mr. President. The committee amendment makes several changes to the bill. The first change adds counties to the list of entities that are allowed to utilize electronic voting devices to satisfy the requirement of a roll call or a voice vote. The committee amendment also adds the provisions of two bills that were heard by the Government Committee--LB465 and LB639. LB465 was introduced by

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

Senator Christensen and this bill would add educational service units to the list of public entities that are allowed to hold public meetings by videoconferencing and telephone conferencing. LB639, introduced by Senator Karpisek, allows a governing body of a risk management pool and the advisory committees of the governing body to hold more than half of their meetings by electronic...excuse me, by telephonic conference if the governing body quarterly meetings are held in person. Under current law, no more than one-half the meetings in a calendar year held by a governing body of a risk management pool or its advisory committees may be held by telephone conference call. The bill with committee amendments was advanced on an 8 to 0 vote. As I mentioned previously, there was no opposition to LB361 at the hearing. Also, there was no opposition at the hearing on either of these two bills that we are amending into LB361. I urge your support for the committee amendment and the underlying legislation. Thank you, Mr. President. [LB361 LB465 LB639]

PRESIDENT SHEEHY: Thank you, Senator Avery. (Visitors introduced.) You have heard the opening of the Government, Military and Veterans Affairs Committee amendment, AM552, to LB361. Members requesting to speak, Senator Gay, you're recognized. [LB361]

SENATOR GAY: Thank you, Mr. President. I don't have a big problem with the amendment. I just have a couple of questions, if Senator Avery would yield. [LB361]

PRESIDENT SHEEHY: Senator Avery, would you yield to questions? [LB361]

SENATOR AVERY: Yes, I will. [LB361]

SENATOR GAY: Thank you, Senator Avery. When I was looking at this, on the teleconferencing or "televideo," I could see where the benefits would be in sparsely populated areas. You don't have to come to meetings and you could do that. The one thing...the concern I have would be, how does that work though if public...they are public meetings, that they can pay attention? I've been on these conferences before, very rarely but we've done it. And...how does the public then participate in the process? That's why there is a public meeting. [LB361]

SENATOR AVERY: You mean with videoconferencing? [LB361]

SENATOR GAY: Yeah. I mean, how would they...do they still have to be publicized and all this on this? [LB361]

SENATOR AVERY: Oh, yes. And the public would participate the same way the members would. [LB361]

SENATOR GAY: I guess I'm not the most literate on a computer. But how do you do

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

that though? I mean, how does it work in reality? Do you go and log on and then...when they publicize the meeting, how do you become involved in it? Call in like a Webinar or... [LB361]

SENATOR AVERY: I think videoconferencing would involve actual video of the meeting. And that would be transmitted to remote locations and satellite locations. [LB361]

SENATOR GAY: Okay. So this just allows them to do this, like... [LB361]

SENATOR AVERY: Right. [LB361]

SENATOR GAY: ...the risk pools and ESUs. I can see they have members scattered all around and... [LB361]

SENATOR AVERY: Right. [LB361]

SENATOR GAY: ...they work with this every day. And probably not a lot of people pay attention to what they're doing, I would venture. So when they do that, they publicize this still in a newspaper? [LB361]

SENATOR AVERY: Everything would come under the open meetings law. They'd have to post, publicize, and have to have it open to the public. If you have a videoconference, there will be video equipment there. So when people wanted to participate, they would be on the video, that would be transmitted to the remote location. [LB361]

SENATOR GAY: Okay. So then...and this is not a requirement, this is you can do it if you want to. [LB361]

SENATOR AVERY: Right. [LB361]

SENATOR GAY: It's not being required. And then...so on the amendment that was the question I had. But, Senator Avery, I did have another one on the regular bill, on the roll call. Is that to be a recorded vote? Is it the same thing, they don't have to buy the equipment? If you didn't have that equipment, people are going through a paper vote presently? [LB361]

SENATOR AVERY: Well, right now they do a paper vote, a handwritten recorded vote. This would allow them to purchase electronic equipment for recording the votes. [LB361]

SENATOR GAY: But they don't have to; they could. [LB361]

SENATOR AVERY: They don't have to do it. [LB361]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

SENATOR GAY: Okay. That was the other question I had. I just...I think this is a good amendment, a good bill. I just wanted some of the details before we moved on and that's what I had. Thank you, Senator Avery. [LB361]

SENATOR AVERY: Thank you. [LB361]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Wightman, you're recognized. [LB361]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. If Senator Avery would yield to a question. [LB361]

PRESIDENT SHEEHY: Senator Avery, would you yield to questions? [LB361]

SENATOR AVERY: Yes, I will. [LB361]

SENATOR WIGHTMAN: Thank you. Senator Avery, I know out in our area we have some solid waste management groups and there's one at Lexington, I think, has something like 30 members. And they've had a lot of problems getting a quorum there. I'm wondering, your bill probably does not include that, either the amendment or the bill. Is that correct? [LB361]

SENATOR AVERY: Well, if you're talking about videoconference meetings, then they could. It would make it easier for them to build a quorum for those meetings. [LB361]

SENATOR WIGHTMAN: Right. [LB361]

SENATOR AVERY: Because someone could be in a satellite location and still participate. [LB361]

SENATOR WIGHTMAN: Is the amendment broad enough to include... [LB361]

SENATOR AVERY: No. I'm sorry, Senator. I was...I have to be corrected here. It only includes ESUs and you're talking about just the videoconferencing? [LB361]

SENATOR WIGHTMAN: Well, or telephonic. [LB361]

SENATOR AVERY: Yeah, it covers ESUs and risk management pools and advisory committees. [LB361]

SENATOR WIGHTMAN: And the fact that they're not included would not affect my vote. I still am supportive of this. I think sometimes it would allow you to go ahead with a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

meeting that you might not otherwise be able to hold. So I will support the bill. We may want to look at including other entities down the road, which is probably easier to do if your bill is passed than if it is not passed. You would agree with that? [LB361]

SENATOR AVERY: I certainly would. [LB361]

SENATOR WIGHTMAN: Okay. So I will intend to support the bill. It does seem to me that it is a step forward and recognizes the technology that we have. And certainly will make it easier to hold some of those meetings that perhaps would just not be able to be held because of a lack of a quorum. Thank you, Mr. President. Thank you, Senator Avery. [LB361]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Avery, seeing no other lights are on, you're recognized to close on AM552 to LB361. Senator Avery waives closing. The question before the body is on the adoption of AM552 to LB361. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB361]

CLERK: 32 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB361]

PRESIDENT SHEEHY: Committee amendment, AM552, is adopted. We'll now return to floor discussion on LB361. Seeing no lights on, Senator Avery, you're recognized to close. Senator Avery waives closing. The question before the body is on the advancement of LB361. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB361]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB361. [LB361]

PRESIDENT SHEEHY: LB361 advances. We'll now move to items under General File, Cornett division. [LB361]

CLERK: Mr. President, LB202, introduced by the Transportation and Telecommunications Committee. (Read title.) Introduced on January 12 of this year, referred to the Transportation Committee, advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB202]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Fischer, you're recognized to open on LB202. [LB202]

SENATOR FISCHER: Thank you, Mr. President and members of the body. This is a committee priority bill introduced by the Transportation and Telecommunications Committee. LB202 is the product of several interested parties over the last two years. The committee worked closely with the Department of Motor Vehicles, the New Car and

Floor Debate
March 18, 2009

Truck Dealers Association, the Nebraska Bankers, and the Nebraska Association of County Officials. All groups are in support of this bill. The bill requires the Department of Motor Vehicles to implement an electronic title and lien system by January 1, 2011. The system will apply to both motor vehicles and motorboats. One of the most frequent complaints of the car-buying public is the failure of the dealer to deliver the title in a timely fashion. The consolidation of financial institutions has resulted in large financial institutions storing thousands of paper titles at central locations, generally not in this state. It is becoming more difficult for dealers and owners to obtain a title for a financed vehicle from large banks with centralized storage of those titles. Currently, liens are noted on the face of a paper certificate of title. In general, the process is done at the county level. The holder of a security interest is required to submit the paperwork associated with the lien for the notation on the title. The lien is noted on the title document. At the same time the lien is noted and stored within the vehicle title and registration, or VTR, system and becomes part of the electronic vehicle record. The paper title with the lien noted is the official document establishing the lienholder's claim on the vehicle. The title must be resubmitted to the county for removal or release of the lien notation. Under this new process, a certificate of title will remain on record in the department's system if a lien or notice of a lien has been filed. The electronic title record will be sufficient evidence of ownership and security interest in a motor vehicle. When an application for title is made, the system will search for an electronic lien filing and note that on the title within the system. All security interest and liens will be noted and cancelled electronically through this system. All liens will take priority in the order of time that they are filed electronically or noted on a printed certificate of title. When a buyer has completed loan payments, lenders will be able to send information to release a lien electronically. If the owner can show that a lender has not responded to a notice of release of a lien within 15 days, a paper certificate of title can be issued. An owner will always be able to obtain a paper certificate of title upon release of all liens or if the owner has moved out of Nebraska and wants to transfer the title to another state. The bill requires the DMV to provide access to the system to dealers and security interest holders. The bill was advanced on an 8-0 vote. There was no opposition. Thank you, Mr. President. [LB202]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You've heard the opening to LB202. Are there members requesting to speak? Senator Nelson, you're recognized. [LB202]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like to address a question to Senator Fischer. [LB202]

PRESIDENT SHEEHY: Senator Fischer, would you yield to questions? [LB202]

SENATOR FISCHER: Yes. [LB202]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

SENATOR NELSON: Good morning, Senator. I was listening to your opening here and I think I heard you say, if a lender fails to issue electronically a release of a lien, then a paper...a certificate of title will be issued? Is that what you said? [LB202]

SENATOR FISCHER: That's correct. [LB202]

SENATOR NELSON: Is that the first time we have a paper...a certificate then? Are we getting away altogether from the paper certificates of title under your proposal? [LB202]

SENATOR FISCHER: We still have the paper certificates of title, but this will help expediate the process, I guess you can say, because we will allow for the electronic filing. [LB202]

SENATOR NELSON: So you're saying that if I buy a used car or something of that sort and I want to title it, I follow the same procedure. I go to Motor Vehicles, they issue me a certificate of title, something I can hold in my hand and the lien will be noted on there if I had to borrow money to do that. So we always have that as a backup, is that correct? [LB202]

SENATOR FISCHER: Senator Nelson, there won't be a paper title until you have paid off the lien. The lien...the recording of the liens will be within the VTR system. [LB202]

SENATOR NELSON: Are there other states using this electronic system? [LB202]

SENATOR FISCHER: Yes. [LB202]

SENATOR NELSON: Okay. This is of interest to me because, for instance, we found it necessary to title one of our cars in Minnesota one time, and had to go through that process. Now I've just been involved in coming back and retitling it here in Nebraska and that involved a lot of complicated paperwork. So I'm just a little concerned about going to an electronic filing on these from the git-go and not having anything to really prove that I own that car that was in Minnesota except something that's held electronically. And if I understand it, it's only down the road when the car is paid off and the lien is released. Well, if it does get released electronically, is there any certificate of title issued at that time then? [LB202]

SENATOR FISCHER: An owner can always receive that paper certificate when there's been a release of all the liens, Senator. Also, if you would happen to move out of state you can request a paper certificate at that time. [LB202]

SENATOR NELSON: For a fee, I suppose, but it's still available if you want to have something, just like we have deeds to real estate and things of that sort. [LB202]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

SENATOR FISCHER: Yes, it is still available. [LB202]

SENATOR NELSON: All right. Thank you for your answers, Senator. Thank you, Mr. President. [LB202]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Stuthman, you're recognized. [LB202]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to engage in a little conversation with Senator Fischer. [LB202]

PRESIDENT SHEEHY: Senator Fischer, would you yield to questions? [LB202]

SENATOR FISCHER: Yes. [LB202]

SENATOR STUTHMAN: Senator Fischer, it was kind of my understanding, you know, we've had this bill for several years already and the issue, the issue was the fact that when an individual would purchase a car and the car didn't have a title with it at the present time because the individual that had traded the car off had probably a lien against it and that lien was housed in a different state. It was in a different state. And the fact that they had to have your check clear, was five days after your check was received and cleared, and then there was a time lapse. And a lot of times it came to the point where you had to get it licensed within 30 days and there was the possibility of 30 to 32 days before you ever received that title because of the procedures that was adopted by the lending institution as to when they release that title. Is it true with this bill now that the lienholder can electronically release that title so that we don't have that time frame of the fact, you know, through the mail and the process and everything like that? Is that correct? [LB202]

SENATOR FISCHER: That's correct, Senator Stuthman. One of the main frustrations that people have is they're not able to get that certificate of title released because of the consolidation, I guess you can say, of a lot of our financial institutions. And as I said in my opening, many of those institutions are not in the state of Nebraska. This way within 15 days that lien can be released electronically or the owner can obtain that paper certificate of title. [LB202]

SENATOR STUTHMAN: Thank you, Senator Fischer. I think the fact is the time frame and when the lending institution can release it, they can release it, you know, electronically. And the fact is they don't have to wait for the mail, which takes another weekend or another week to get that title, that certificate of title. I do support this. I think it will make the situation a lot better as far as when the individuals that do purchase a vehicle, you know, get the title and then they can license their vehicle. So with that, I support this bill. Thank you, Mr. President. [LB202]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

PRESIDENT SHEEHY: Thank you, Senator Stuthman. (Visitors introduced.) Senator Fischer, seeing no additional lights on, you're recognized to close on LB202. [LB202]

SENATOR FISCHER: Thank you, Mr. President and members. As I said, this has been a project of the committee for two or three years now. We have all parties that have signed off on it. I think it will definitely benefit the public and they can avoid some of the frustrations that Senator Stuthman mentioned in having to wait for that release of liens. With that, I would ask that you please advance this from General File. Thank you. [LB202]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing. The question before the body is on the advancement of LB202. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB202]

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of LB202. [LB202]

PRESIDENT SHEEHY: LB202 advances. Next item under General File. [LB202]

CLERK: LB202A, Senator Fischer. (Read title.) [LB202A]

PRESIDENT SHEEHY: Senator Fischer, you're recognized to open on LB202A. [LB202A]

SENATOR FISCHER: Thank you, Mr. President and members. This A bill will cover the programming costs involved with LB202. Thank you. [LB202A LB202]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You've heard the opening to LB202A. Are there members requesting to speak? Senator Heidemann, you're recognized. [LB202A]

SENATOR HEIDEMANN: Thank you, Lieutenant Governor, fellow members of the body. I just wanted to touch briefly with you. This is an A bill. There's been some questions about, from new members, about, you know, how we handle A bills. These bills that have A bills attached to them will not be passed on Final Reading until our budget passes. I call it...we have trains going down the tracks, these get put on a side rail until our budget passes Final Reading. We have challenges before us. I'm not picking on Senator Fischer's bill by any means, but I thought it was needed that I stand up and say a few words. We do have challenges before us this year financially. We're trying to figure out what we're going to be able to do in Appropriations as far as if we can allow any money to come up here for A bills. As we start to go through this process and you see more A bills come before you, it would probably be wise to start choosing priorities already, at least that's my opinion. And I don't want to stand up and really talk

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

on anybody's A bills because it will be up to you to determine priorities. I will probably forewarn you, though, with the budget situation that we're in there will not be a whole lot of money for appropriations bills this year, unless miracles happen. So I just wanted to touch base with you and let you know that the A bills do get put off to the side until our main budget passes. If you have other questions, get ahold of me, anybody else on Appropriations Committee or the Fiscal Office is a good resource. Thank you. [LB202A]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Seeing no additional lights on, Senator Fischer, you're recognized to close. [LB202A]

SENATOR FISCHER: Thank you, Mr. President and members of the body. Usually, when a bill is passed, if you voted for the bill you vote for the A bill. I will clarify that this comes out of the DMV Cash Fund, this is not General Fund money. With that, I would ask you to advance the bill. Thank you. [LB202A]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing. The question before the body is on the advancement of LB202A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB202A]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB202A. [LB202A]

PRESIDENT SHEEHY: LB202A advances. Next item under General File. [LB202A]

CLERK: Mr. President, LB328 is a bill by Senator Pahls. (Read title.) The bill was introduced on January 15, referred to the Banking, Commerce and Insurance Committee. The bill was placed on General File. At this time I have no amendments, Mr. President. [LB328]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Pahls, you're recognized to open on LB328. [LB328]

SENATOR PAHLS: Thank you, Mr. President, members of the body. LB328 was introduced at the request of the director of the Department of Banking and Finance. The purpose of LB328 is to implement the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, commonly referred to as the SAFE Act, which was part of the Housing and Economic Recovery Act of 2008, adopted by the Congress and signed into law on July 30, 2008. The SAFE Act mandates that states adopt a system of license for residential mortgage loan originators by July 31 of 2009. This system of licensure will apply to all loan originators, except those who work at a depository institution and certain other subsidiaries who instead must register through procedures adopted by the Federal Financial Institution Examination Council, which includes state regulators. If a state does not adopt a system that meets the SAFE Act mandates, the United States Department of Housing and Urban Development, HUD, is required to create a system

Floor Debate
March 18, 2009

for licensing loan originators in that state. State regulators, including our Department of Banking, have worked through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to draft a model state code to incorporate the mandates contained in the SAFE Act. The Nebraska Department of Banking has been advised that LB328 complies with the SAFE Act. The SAFE Act will have a wide-ranging impact on all mortgage lenders, including industries previously exempt from mortgage regulation. As such, LB328 contains amendments to the Nebraska Mortgage Bankers Registration and Licensing Act, the Nebraska Installment Loan Act, and the State Federal Cooperation Acts, along with cross-referencing updates to the Nebraska Bank Act and the Nebraska Foreclosure Protection Act. The framework of this legislation is the current Nebraska Mortgage Bankers Registration and Licensing Act, which was originally enacted in 1989. In 2007, changes were made to the act to authorize the department to join the Nationwide Mortgage Licensing System, called NMLS, an electronic system of licensing that allows a company to complete one application and submit it to any state that is a member of this system. This system became operational July...excuse me, January 2, 2008, with Nebraska being one of the original eight states on that system on that day. LB328 would change the name of the Mortgage Bankers Registration and Licensure Act to the Residential Mortgage Licensing Act because both individuals and firms will be covered under the new legislation. LB328 would authorize the licensing of loan originators through the nationwide electronic system which itself will be renamed and known as the Nationwide Mortgage Licensing System and Registry, commonly referred to as NMLSR. This is to reflect the additional requirements of the SAFE Act. Employees and agents of the mortgage bankers and installment loan companies will be required to be licensed through their registry as loan originators, unless the individual's duties are limited to clerical activities as defined in LB328 and in the SAFE Act. The registry will assign a unique identifier to each individual which can be used to track the loan originators across state lines, from company to company. In addition, the unique identifier will allow lenders, regulators, and law enforcement authorities to identify the individual who originated each mortgage loan, thus enhancing the ability to detect patterns of mortgage fraud. LB328 would require that all loan originators must complete 20 hours of prelicensure education, must take and pass a prelicensure test, and must maintain a surety bond or a net worth, pay into a recovery fund, or work for a company which maintains a surety bond or a net worth requirement. The amount of this bond or net worth must be based upon the dollar amount of the loans that the loan originator or company originates in a particular state in a calendar year. The bill would further provide that any loan originator who has had his or her license revoked in any jurisdictions cannot obtain a loan originator license in Nebraska. These requirements are specified...or are mandated by the SAFE Act. As part of the licensing process, the Department of Banking must conduct a background check on each applicant, including a background check through the Federal Bureau of Investigation fingerprint database. Applicants with certain convictions will be ineligible to hold a loan originator license. Applicants will be subject to credit checks and civil background checks. These

Floor Debate
March 18, 2009

procedures will be handled through the registry. Once an individual is licensed as a loan originator, the license must be renewed on an annual basis. In order to maintain eligibility for licensure, all loan originators must annually complete eight hours of continuing ed. LB328 contains additional standards for firms that conduct mortgage banking. These include a requirement that all mortgage companies must submit reports of condition to the Department of Banking and adjust their bond amounts based on these reports. The SAFE Act mandates that a state regulator must report violations of law and enforcement actions to the registry and provide a procedure for loan originators to challenge that information if placed on the registry. A regulator may use the registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any government agency related to criminal history. They can also use this for requesting information from a...distributing information to any source relating to applicants and licensees. LB328 would contain the authority of our Department of Banking to meet these requirements. This registry will provide for an efficient and uniform process among the states and will facilitate a smooth transition with loan originators when they move from company and between licensees and financial institutions. As part of this, LB328 authorizes the Department of Banking to adopt interim procedures for licensing to use to expedite procedures for previously licensed or registered individuals. Since it became clear that Congress would be enacting legislation to regulate mortgage loan originators, the focus of our Department of Banking has been on reporting or developing a proposal that would allow Nebraska to simultaneously meet the mandates of the SAFE Act and to provide for an efficient and not overly burdensome licensing process. LB328 meets those goals. LB328 is Nebraska's vehicle for compliance with the federal SAFE Act. LB328 has passed muster with the United States Department of Housing and Urban Development. That means that with the enactment of LB328 our Department of Banking will be empowered to carry out the federal mandates to protect our citizens. With this, I urge you to advance LB328. Thank you. [LB328]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You've heard the opening to LB328. Are there members requesting to speak? Seeing none, Senator Pahls, you're recognized to close. Senator Pahls waives closing. Senator...the question before the body is on the advancement of LB328. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB328]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB328. [LB328]

PRESIDENT SHEEHY: LB328 advances. (Visitors introduced.) We'll move to the next item under General File, Mr. Clerk. [LB328]

CLERK: Mr. President, LB620 is a bill introduced by Senator Wightman. (Read title.) Introduced on January 21, referred to the Executive Board for public hearing. The bill was advanced to General File. At this time, Mr. President, I have no amendments to the

Floor Debate
March 18, 2009

bill. [LB620]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Wightman, you're recognized to open on LB620. [LB620]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. LB620 pertains to the Audit and Research Division of the Legislative Counsel. I introduced LB620 as a follow-up to action taken by the 2008 Executive Board, and that was before I was Chair. Briefly, let me give you some background information that led up to the perceived need for this bill. In 1992, the Legislature established a performance audit function within the legislative branch and assigned responsibility for conducting performance audits to the Legislative Research Division. The director of Research was charged with managing the performance audit process along with the office's historical functions of providing research to the Legislature and overseeing the Legislative Reference Library. In 2006, a separate position of Legislative Auditor was created and the Legislative Research Division became the Office of Legislative Audit and Research. The director of Research retained supervisory authority over all office staff, except the auditors. The Legislative Auditor became the supervisor of the audit staff. However, the research and audit functions remained under one budget program administered by the director of Research, who in turn consulted with the Legislative Auditor in preparing the budget. In 2008, the Performance Audit Section underwent an independent professional peer review that recommended the audit function become freestanding and organizationally independent. Last October the Executive Board approved a request from the Performance Audit Committee to support the recommendation that the Legislature's research and audit functions be separated. The current Performance Audit Committee also supported this recommendation and so I introduced LB620 to carry out those recommendations. In summary, LB620 would allow the Office of Legislative Audit and Research to be organized under separate offices for budgetary and all other purposes. Separating these offices physically is not expected to result...well, first of all, it is not expected that they will be separated physically. They may change the layout of the Legislative Research and the Audit Offices, the Performance Audit Offices somewhat, so it's not expected to result in an increase in staff or operating cost. They will continue to operate in the same space and will share certain equipment. We have their assurance that at least in the next year, this biennium, that there would not be any additional cost as a result of this. But they would have separate budgets, and it would provide some confidentiality. They really need to be confidential because when anyone of you legislators or staff go down and talk about policy and ask for research with regard to legislative policy, until you submit that bill on the floor, you really want that to have some confidentiality. And that would be...part of the purpose of this act is to maintain that confidentiality. Now when I say there will not be any increased staff, I do want you to know that during next year we will start to at least look at redistricting across the state of Nebraska, and that is a decennial function that comes about with the result of the decennial census. And, of course, we get involved in not only redistricting the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

Legislature but also redistricting our Congressional districts, which is also done through the Legislature. So there probably will be staff added at that time, but it won't be as a result of separating these functions. It will be just to take care of the additional work that is made necessary by the redistricting function that is to be carried on by the Legislature. With this information, I would appreciate your support to advance LB620 to Select File. I know that Senator Harms will address this issue as well because this bill has been selected as a committee priority bill for the Legislative Performance Audit Committee. So I will be happy to answer any questions that you might have to the extent I am able. Thank you, Mr. President. [LB620]

PRESIDENT SHEEHY: Thank you, Senator Wightman. You have heard the opening to LB620. Those wishing to speak are Senator Harms. Senator Harms, you're recognized. [LB620]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in support of LB620. I agree with Senator Wightman, the Audit Performance Committee has grown in strength and responsibility. And it really is important for us to separate out the duties and responsibilities here. It's important for them to have their own budget. It's important for them to have the right to be able to hire and fire their people and be in control of it. And as I look at the future for the Performance Audit Committee, I think we'll continue to see it grow, we're continue to use it more to do more investigations, to do more studies for us, so I think it is critical, and the fact that the peer group that was in here made a strong recommendation that indicated that we need to separate these duties. It's pretty typical all across the United States, where they have committees such as this, that they are independent. And the privacy and confidentiality is critical to the success of this program. So I would urge you to support this bill. It's a good bill. It's a move in the right direction. So thank you, Mr. President. [LB620]

PRESIDENT SHEEHY: Thank you, Senator Harms. Seeing no additional lights on, Senator Wightman, you're recognized to close. [LB620]

SENATOR WIGHTMAN: I just will briefly say that I do think this is an important separation of powers. And would urge your support to advance LB620 to E&R Initial...or to Select File. [LB620]

PRESIDENT SHEEHY: Thank you, Senator Wightman. You have heard the closing. The question before the body is on the advancement of LB620. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB620]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB620. [LB620]

PRESIDENT SHEEHY: LB620 advances. We'll move to next item under General File. [LB620]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

CLERK: LB164, a bill by Senator Cornett. (Read title.) Introduced on January 12 of this year, at that time referred to the Revenue Committee. The bill was advanced to General File. There are Revenue Committee amendments, Mr. President. (AM234, Legislative Journal page 412.) [LB164]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open on LB164. [LB164]

SENATOR CORNETT: Thank you very much, Lieutenant Governor and members of the body. LB164 was a bill brought to me by the Department of Revenue and Revenue administration. Several of the tax incentive laws included in the bill had sunset dates. The bill as introduced removed those sunset dates. As amended, we have extended them. With that, I will be happy to open on the committee amendment. [LB164]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening to LB164. As stated, there is a Revenue Committee amendment, AM234. Senator Cornett, you're recognized to open. [LB164]

SENATOR CORNETT: Thank you again, Lieutenant Governor. The committee amendment modifies the sunset dates on tax incentive programs. The original bill provisions called for eliminating these sunset dates. The committee decided to extend the sunset dates until December 31, 2015, rather than completely eliminate them. This gives the Legislature additional time to review the effectiveness of these programs. It also gives the programs additional time to be implemented by the applicants. The committee was provided some data on applications and uses of incentives. And I would be happy to provide these to members at individual request. Another portion of the amendment indexes the tax incentive's threshold dollar amounts using the Producer Price Index. This allows the thresholds to change with the economy, rather than requiring the amounts to be changed by the passage of a new law. With that, I urge the body to adopt the committee amendments. Thank you. [LB164]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening of the Revenue Committee amendment, AM234. Are there members requesting to speak? Seeing none, Senator Cornett, you're recognized to close. [LB164]

SENATOR CORNETT: Thank you very much. I'll waive closing on the committee amendments. [LB164]

PRESIDENT SHEEHY: Senator Cornett waives closing. The question before the body is on the adoption of AM234 to LB164. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB164]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of committee amendments.
[LB164]

PRESIDENT SHEEHY: Revenue Committee amendment, AM234, is adopted. We'll now return to floor discussion on LB164. Are there members requesting to speak? Seeing...Senator Stuthman. [LB164]

SENATOR STUTHMAN: Thank you, Mr. Lieutenant Governor and members of the body. I would like to engage in a little discussion with Senator Cornett. [LB164]

PRESIDENT SHEEHY: Senator Cornett, would you yield to questions? [LB164]

SENATOR CORNETT: I'd be happy to. [LB164]

SENATOR STUTHMAN: Senator Cornett, I've been just going over the bill for a little bit. And could you turn to the green copy, on page 23, on page 23 of the green copy, the new language. And I didn't cross-reference it over as to if it dealt with any of that in your amendment. But I would like to have some explanation as...and I don't understand this, the fact that, "excluding any compensation in excess of \$1 million paid to any one employee during the year." Can you explain, you know, what is that, you know, \$1 million of credit paid to one employee during the year? [LB164]

SENATOR CORNETT: Basically, what that does is it just creates the upward limit on the incentive program for that tier. [LB164]

SENATOR STUTHMAN: And that's that... [LB164]

SENATOR CORNETT: Yes. [LB164]

SENATOR STUTHMAN: ...the top limit on that tier 6, I think that was the tier 6 one.
[LB164]

SENATOR CORNETT: Yes, I believe so. [LB164]

SENATOR STUTHMAN: That is correct, so...okay, yeah, I just had a concern on that and I think that was a...I don't know if that's added to it. But it probably makes the tier a little bit better. But I will engage in discussion off the floor with Senator Cornett at some time. Thank you. [LB164]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Other members requesting to speak are Senator Langemeier, followed by Senator Rogert. Senator Langemeier, you're recognized. [LB164]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

SENATOR LANGEMEIER: Mr. President, members of the body, as Senator Lathrop prepares for his next bill, maybe we'll try and help him with this a little bit. Would Senator Cornett yield to a question? [LB164]

PRESIDENT SHEEHY: Senator Cornett, would you yield to a question? [LB164]

SENATOR CORNETT: I'd be happy to, Senator Langemeier. [LB164]

SENATOR LANGEMEIER: Senator Cornett, it's my understanding that LB164, and you've kind of briefly talked about in your opening, the design was to repeal the sunsets on many of the LB775 and LB312 programs that were passed over the last few years, correct? [LB164]

SENATOR CORNETT: That is correct. That was the original bill that was brought to the committee. [LB164]

SENATOR LANGEMEIER: And the committee took those and, per se, didn't want to sunset them. They wanted to re-extend them, what, five years? [LB164]

SENATOR CORNETT: Five years, yes. [LB164]

SENATOR LANGEMEIER: Okay. So we put sunset dates in and you mentioned it earlier in your testimony, they're to evaluate whether these programs are actually working. We're now at a sunset period that we're going to extend. Has anybody done any studies to really tell us whether this was working or we would have got businesses without these programs or...? [LB164]

SENATOR CORNETT: That is why we opted to extend rather than eliminate the sunsets, is because we are in the middle of gathering data on how effective these programs are. The problem is a lot of the people that have applied for the programs are right in the middle of working through the provisions to receive the incentives. So we don't have full data yet on how effective they are. That is why we opted to extend the programs. [LB164]

SENATOR LANGEMEIER: So as you talk about that data coming in, who can I expect...in five years I won't be a member of the Legislature due to term limits and maybe my own fruition. Who can I expect to produce this report? Is this going to be DED, is this going to be Department of Revenue, is it going to be the Omaha Chamber or who's going to tell us whether it's working? [LB164]

SENATOR CORNETT: I have to tell you that the Department of Revenue, the DED, and the Omaha Chamber have been extremely helpful through this process, particularly the Tax Commissioner. He has provided us all the pertinent data that we have on the

Floor Debate
March 18, 2009

companies that have applied and where they are in the process. And I would expect that it would be the Tax Commissioner that would provide that to the Revenue Committee in five years. [LB164]

SENATOR LANGEMEIER: Okay, thank you. Those are just some of the questions I had. And again, I'm very supportive of LB164 and the amendment that we just put on to...I think it's always good to have these bills have a look-back period, whether it's in five years or what, whether it's five, ten, whatever we put on them. I think it's very important. My question is, as we are to a point in time that a deadline came and there was no report, so I want to be on the record saying I'm hoping and expecting, even though in that fifth year I won't be here, that there is a report to look at in the fourth year to tell us the future, and so we don't have to extend these another five years and look to hope to have results then. So with that, thank you, Mr. President. [LB164]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. Senator Rogert, you're recognized. [LB164]

SENATOR ROGERT: Thank you, Mr. President, members of the body. As Senator Langemeier mentioned, the Judiciary Committee was in Exec meeting for the better part of an hour. And Senator Lathrop's bill kind of came up unexpectedly here. So I'm just going to give him help and give him a little more time to prepare. Senator Cornett...would Senator Cornett yield to a question? [LB164]

PRESIDENT SHEEHY: Senator Cornett, would you yield to a question from Senator Rogert? [LB164]

SENATOR CORNETT: I would be happy to. [LB164]

SENATOR ROGERT: Senator Cornett, can you explain to me what the committee amendments do a little bit better, what we just passed that changes it from the original bill, please? [LB164]

SENATOR CORNETT: Yes. The original bill required for the repeal of the sunsets on a number of provisions in the Advantage Act. And because we did not have the full data in regards to what the economic implications of that were, the committee decided that it was in the best interest of the state, particularly in our fiscal situation, to look at extending those sunsets so we could gather the data required rather than just eliminate them completely. The bill also covers some other...changes some other provisions in the Advantage Act that I'd be happy to answer for you also. [LB164]

SENATOR ROGERT: That would be great. Can you go ahead and explain those for me? [LB164]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

SENATOR CORNETT: Section 3 dealt with military installations. When we passed the Nebraska Advantage Act, we included employees that were telecommunication employees or worked not necessarily at the place, but excluded in the way it was drafted people that work for a defense contractor but are off-site employees. So one of the provisions that we looked at in the bill and have included is Section 3, which amends the definition of new employee under the Nebraska Advantage Act to include employees who work at a military installation in Nebraska for a taxpayer...or on tasks interdependent with the work performed at the project. What we had done with the original passage is exclude people that work for companies that contract with the military. Those employees frequently have to be situated on base in what's called a skiff. And because they were not at their company's...working from their company's headquarters, they were excluded under the act. And we included this provision to include them. [LB164]

SENATOR ROBERT: Can you give me an idea who might benefit from the Agricultural Opportunities and Value-Added Partnerships? What kind of companies are...for example, who has been taking advantage of that provision? [LB164]

SENATOR CORNETT: I was going to say, from what I understand, it would be farm-based businesses. That is Section 1, correct? [LB164]

SENATOR ROBERT: Yeah, that's in Section 1. [LB164]

SENATOR CORNETT: It basically just agricultural businesses. Would you like me to break the bill down section by section on the changes that we made? [LB164]

SENATOR ROBERT: Yes, that would be helpful. Thank you. [LB164]

SENATOR CORNETT: Great. Section 1 extends the Agricultural Opportunities and Value-Added Partnership grant programs until January 1 of 2015. This program was required to sunset January 1, 2011. Section 2 amends the Nebraska Advantage Rural Development Act to provide credits for approved projects on a calendar year rather than a fiscal year, because all other tax incentive programs are based on a calendar year, not a fiscal year. This is basically a cleanup provision of a bill that was passed last year. Section 3 amends the definition of new employee, which we already discussed, under the Nebraska Advantage Act to include employees who work at military installations in Nebraska for a taxpayer on task interdependent with the work performed at the projects. Section 4 amends a definition of a qualified business under the Nebraska Advantage Act... [LB164]

PRESIDENT SHEEHY: One minute. [LB164]

SENATOR CORNETT: ...to include businesses in which 75 percent or more of their

Floor Debate
March 18, 2009

revenues are derived from the sale of tangible, personal property to unrelated consumers outside of the state. This provision would incent the development of major national retailer based here selling on a nationwide basis. At present we have such retailers, and they are receiving incentives based on headquarters employment and investment, but would not receive this incentive for the same jobs. Should a new business of this type move into the area and establish a nationwide presence or begin to expand to the size necessary under the Advantage Act, they would be able to claim these credits. And this would be useful in providing growth. Section 5 allows a taxpayer and the Tax Commissioner to amend an application under the Nebraska Advantage Act to a lower tier of benefits provided. The amendment is consistent with the purpose of that act and meets the definition of... [LB164]

PRESIDENT SHEEHY: Time, Senator. [LB164]

SENATOR CORNETT: ...qualified business under the respective tier. [LB164]

SENATOR ROBERT: Thank you, Senator Cornett. Thank you, Mr. President. [LB164]

PRESIDENT SHEEHY: Thank you. Senator Cornett, you are the last light on. Would you like to use your 5 minutes or close? [LB164]

SENATOR CORNETT: Yes. I will do both, sir. Section 5 on the bill, I'll continue just breaking down the sections that we're changing. Section 5 allows a taxpayer and the Tax Commissioner to amend an application under the Nebraska Advantage Act to lower the tier of benefits provided. The amendment is consistent with the purpose of the act and meets the definition of a qualified business under that respective tier. Section 6 eliminates the sunset under the Nebraska Advantage for tier 1 and tier 3 projects. Currently, no new tier 1 and 3 applications will be accepted on or after January 1, 2011. The sunset dates are extended until December 31, 2015, under the amendments adopted by this body a few moments ago. The adjust investment threshold index formula under the Nebraska Advantage Act adjusts the base index for tier 6 from the first quarter of 2006 to the quarter of 2008. Section 7 allows credit usage against income tax withholding for tier 6 projects to apply to all employees employed at the respective project. Currently, credits may only be used against withholding attributable to new employees employed at said project. Section 8 amends Nebraska Advantage to apply uniform recapture of benefits between the tiers. Currently, the amount subject to recapture equals one-seventh of the benefit used, regardless of the respective entitlement period. Section 9 prohibits interest on refunds under the Nebraska Advantage Research and Development Act. Section 10 eliminates the sunset for the Nebraska Advantage Research and Development Act. The program is set to expire on January 1, 2011. The sunset dates are extended until December 31, 2015, under the amendment adopted by the committee and this body. Section 11 eliminates the sunset for the Nebraska Advantage Microenterprise Tax Credit Act. Currently, no applications

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

will be approved after December 31, 2010. The sunset dates are extended until December 31, 2015, under the amendments adopted by the committee. Section 12 prohibits the interest on refunds under the Nebraska Advantage Microenterprise Tax Credit Act. Section 13 extends the Building Entrepreneurial Communities Act grant program until January 1, 2015. This program is also set to expire on January 1, 2011. Section 14 will make Sections 6 and 7 effective January 1, 2009. Section 15 was the original sections of 77-5725 and 77-5726 Revised Statutes Cumulative Supplement, and the 2008 will be repealed. And Section 16 are the original sections 2-5413 and 81-12,125, the Reissue of Revised Statutes of the Nebraska section 77-27,187.02, 77-5714, 77-5715, 77-5723, 77-5727, and 77-5906, the Revised Statutes Cumulative Supplement 2008 are repealed. Thank you. [LB164]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Seeing no additional lights on, Senator Cornett, you're recognized to close. [LB164]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. Again, I would urge the body to support LB164. This was a bill that was brought to us by the Department of Revenue. The main focus of this bill is the amendment of tax incentive laws currently used here in Nebraska. Several of these tax incentive laws have sunset dates and the bill will extend those sunset dates until we have the data necessary to see how effective the program are. The committee spent several...a considerable amount of time discussing these sunset dates. And after the discussion, we decided not to terminate, as was explained, but rather to extend those. Other important features of this bill are adopting a calendar year funding period for a program that is currently a fiscal year program to bring it into line with how we handle all of the other incentive programs. The result of this is a uniform administration...administrative period for all of these economic development programs. Further, a definition of incented jobs to include jobs which must be performed at a site, performed on-site at a military installation. Currently, the jobs are created in Nebraska but may not count towards incentives because the employee is doing a job at a military base. The job site on bases is required in order to do work in military-secured installations as a private contractor. The bill contains provisions that allow companies selling 75 percent or more of its products outside the state as an eligible receipt of tax incentives. Currently, all known companies of this type headquarters in the state are already receiving tax incentives under provisions allowed for corporate headquarter incentives. Should a company locate or relocate to Nebraska in the future that meets this criteria, it would be ineligible for the incentives under this program. Currently, we know of no company at this time seeking these incentive treatments. But this amendment offers this option if one should apply. With that, again I urge the body to support LB164. Thank you. [LB164]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing. The question before the body is on the advancement of LB164. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB164]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 18, 2009

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB164. [LB164]

PRESIDENT SHEEHY: LB164 advances. Items for the record, Mr. Clerk. [LB164]

CLERK: Mr. President, new resolution, LR57, by Senator Mello and LR58 by Senator Mello, both will be laid over. Natural Resource Committee, chaired by Senator Langemeier, reports LB134, LB160, and LB436 to General File with amendments as well, and LB246 to General File with amendments. Reference report referring certain gubernatorial appointees to the appropriate standing committee for confirmation hearing. Name adds: Senator McCoy to LB36 and LB327; Senator Haar to LB396; Senator McCoy, LB547, LB646, LB660; and Senator Harms to LB675. Announcement, Mr. President: The Exec Board will meet tomorrow morning in Room 2102 at 9:00; the Executive Board at 9:00 a.m. tomorrow morning. (Legislative Journal pages 773-782.) [LR57 LR58 LB134 LB160 LB436 LB246 LB36 LB327 LB396 LB547 LB646 LB660 LB675]

And I do have a priority motion. Senator Gay would move to adjourn the body until Thursday morning, March 19, at 9:00 a.m. []

PRESIDENT SHEEHY: You have heard the motion to adjourn until Thursday, March 19, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned. []